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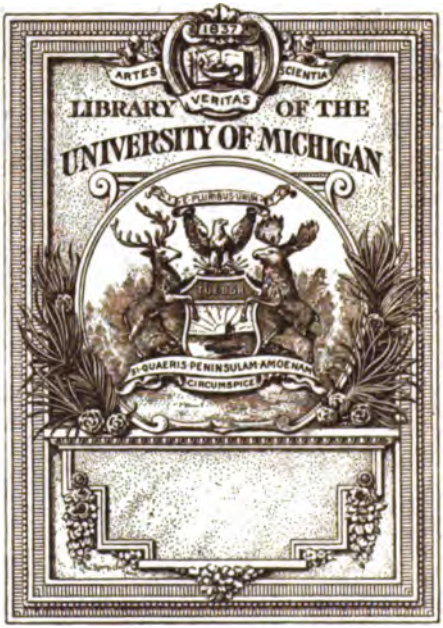

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NOTES

ON THE

UNITED STATES SUPREME COURT REPORTS

SUPPLEMENTARY TO

ROSE'S NOTES ON UNITED STATES REPORTS,

SHOWING THE PRESENT AUTHORITY OF EACH CASE AS DISCLOSED BY THE

CITATIONS

FOUND IN ALL THE REPORTS, BOTH FEDERAL AND STATE, SINCE JULY 1, 1904, WITH PARALLEL REFERENCES TO AMERICAN STATE REPORTS AND THE REPORTER SYSTEM.

BY

CHAS. L. THOMPSON,

OF THE SAN FRANCISCO BAR.

SUPPLEMENT FOUR.

SAN FRANCISCO:

BANCROFT-WHITNEY CO.,

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PREFACE.

These two volumes of citations to the decisions in the United States Supreme Court Reports have accumulated since the publication of the last supplemental volumes to Rose's Notes on United States Reports. The thirty-five thousand citations contained herein have been treated under the same plan followed by Mr. Rose in the original work. As in the preceding supplemental volumes, the syllabi contained in the original notes have been condensed to one line, with references to the exact volume and page in the original notes where the particular point is to be found in Rose's Notes.

The original syllabus is referred to by volume and page of Rose's Notes, and the number of the particular syllabus therein which is annotated, thus:

On page 853 of Book Three of Rose's Notes will be found syllabus 8 of the case of Bagnell v. Broderick; therefore, that syllabus is referred to as follows:

"Syl. 8 (III, 853). Patent is conclusive of legal title."

In these supplemental volumes only cases which have been cited since the preparation of the last supplements are to be found. If a case is not referred to here, it is because at the time of the preparation of this work it had not been cited. Those cases which have not been cited have been omitted.

As volumes 172 et seq. of the United States Supreme Court Reports were published after Rose's Notes, the cited points in these volumes are contained in a one line index reference with the page in the Supreme Court Report on which the point is discussed.

CHAS. L. THOMPSON.

San Francisco, December, 1908.

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THE CITATIONS IN THIS BOOK

include all from the following Reports and all preceding them in each state or series since July 1, 1904:

U. S.	202	Mo. App.	118
L. Ed.	50	Mont.	33
Fed.	150	Neb.	70
Ala.	144	Nev.	28
Alaska	2	N. H.	73
Ariz.	7	N. J. Eq.	69
Ark.	78	N. J. L.	72
Cal.	148	N. M.	11
Cal. App.	2	N. Y.	185
Colo.	34	N. C.	140
Colo. App.	20	N. D.	13
Conn.	78	Ohio	74
Del.	4 Pennewill	Okl.	16
Fla.	50	Or.	47
Ga.	126	Pa.	215
Idaho	11	R. I.	27
Ill.	224	S. C.	74
Ind.	165	S. D.	18
Ind. App.	36	Tenn.	115
Iowa	130	Tex.	98
Kan.	72	Tex. Cr.	46
Ky.	119	Tex. Civ.	36
La.	116	Utah	29
Me.	101	Vt.	78
Md.	103	Va.	105
Mass.	191	Wash.	42
Mich.	144	W. Va.	58
Minn.	97	Wis.	128
Miss.	87	Wyo.	14
Mo.	197	Am. St. Rep.	113

with duplicate references to the Reporter System and to L. R. A.

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II DALLAS.

2 Dall. 402-409, 1 L. 433, GEORGIA v. BRAILSFORD.

Syl. 3 (I, 10). Requisites of bill for preliminary injunction.

Approved in Camors-McConnell Co. v. McConnell, 140 Fed. 418, enjoining defendant from violating contract not to engage in certain business; Hoy v. Altoona etc. Oil Co., 136 Fed. 485, granting preliminary injunction where recovery of shares of stock alleged to have been obtained through fraud; Harriman v. Northern Sec. Co., 132 Fed. 478, granting preliminary injunction to prevent violation of anti-trust act by merger of corporations in new corporation.

Syl. 5 (I, 10). State's suit through governor.

Approved in dissenting opinion in Henry v. State, 87 Miss. 94, 39 So. 884, majority holding under constitution governor cannot sue in name of state.

2 Dall. 419-480, 1 L. 440, CHISHOLM v. GEORGIA.

Syl. 1 (I, 13). Suability of state.

See 108 Am. St. Rep. 832, note.

Syl. 4 (I, 15). Jurisdiction of federal courts limited.

Approved in Clark v. Allaman, 71 Kan. 215, 80 Pac. 575, determining applicability of common-law rules relating to riparian rights.

Syl. 8 (I, 16). Service of subpoena in state's suit.

Approved in dissenting opinion in Henry v. State, 87 Miss. 94, 95, 39 So. 884, majority holding under constitution governor cannot sue in name of state.

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III DALLAS.

3 Dall. 6-16, 1 L. 485, GLASS v. THE SLOOP BETSEY.

Syl. 2 (I, 18). District court's admiralty jurisdiction.

Approved in Arnold v. Eastin, 116 Ky. 699, 76 S. W. 856, recording of mortgage in place other than home port of vessel does not impart constructive notice.

3 Dall. 17, 18, 1 L. 490, UNITED STATES v. HAMILTON.

Syl. 1 (I, 20). Habeas corpus to admit to bail.

Approved in Ex parte Moran, 144 Fed. 600, circuit courts of appeals may issue habeas corpus within respective jurisdictions.

3 Dall. 19-42, 1 L. 491, BINGHAM v. CABBOT.

(I, 21.) Miscellaneous. Cited in Watkins v. Mooney, 114 Ky. 652, 71 S. W. 624, where mayor was absent for a day at another town twenty-five miles distant, president of aldermanic board cannot appoint police commissioner.

3 Dall. 42-54, 1 L. 502, UNITED STATES v. LAWRENCE.

Syl. 1 (I, 23). Mandamus to compel decision.

Approved in Cattermole v. Ionia Circuit Judge, 136 Mich. 280, 99 N. W. 3, mandamus does not lie to review action of circuit judge in quashing writ and to compel setting aside of order.

3 Dall. 54-120, 1 L. 507, PENHALLOW v. DOANE.

Syl. 3 (I, 25). Admiralty proceedings are in rem.

Approved in Erie etc. Transp. Co. v. Erie R. Co., 142 Fed. 12, after decree determining fault for collision and damages and apportioning same, admiralty cannot entertain independent suit by one vessel to enforce contribution for cargo damage.

3 Dall. 121-132, 1 L. 535, UNITED STATES v. PETERS.

Syl. 1 (I, 28). Prohibition to district judge.

See 111 Am. St. Rep. 944, note.

3 Dall. 171-184, 1 L. 556, HYLTON v. UNITED STATES.

Syl. 1 (I, 30). Tax on carriages not direct tax.

Approved in People v. Reardon, 184 N. Y. 447, 112 Am. St. Rep. 637, 77 N. E. 975, upholding tax on stock transfers.

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3 Dall. 199-285, 1 L. 568, WARE v. HYLTON.

Syl. 4 (I, 34). Treaty overrides prior statute.

Approved in In re Wyman, 191 Mass. 279, 77 N. E. 380, under Russian treaty, Russian vice-consul entitled to letters in estate of intestate Russian to exclusion of public administrator.

3 Dall. 297-301, 1 L. 610, UNITED STATES v. LA VENGEANCE.

Syl. 1 (I, 36). Forfeiture of vessel is civil proceeding.

Approved in Kirkland v. State, 72 Ark. 179, 105 Am. St. Rep. 25, 78 S. W. 773, 65 L. R. A. 76, act of 1899, providing for condemnation and summary destruction of liquor illegally kept for sale prescribes civil proceeding so that mere preponderance of evidence suffices.

3 Dall. 306, 1 L. 613, ARCAMBEL v. WISEMAN.

Syl. 1 (I, 39). Attorneys' fees as damages.

Approved in Frantz v. Saylor, 12 Okl. 42, 69 Pac. 795, following rule; Lindeberg v. Howard, 146 Fed. 470, in action on injunction bond given in Alaska territorial court attorneys' fees expended in obtaining dissolution of injunction are not proper element of damages.

3 Dall. 320, 321, 1 L. 619, GRAYSON v. VIRGINIA.

Syl. 1 (I, 41). Service of process against state.

Approved in Henry v. State, 87 Miss. 34, 95, 39 So. 863, 884, under constitution, governor cannot sue in name of state.

3 Dall. 321-330, 1 L. 619, WISCART v. D'AUCHY.

Syl. 4 (I, 42). Effect of appeal.

Approved in Chattanooga v. Keith, 115 Tenn. 589, 94 S. W. 63, upholding provision of Chattanooga charter denying right of appeal from city court where fine does not exceed ten dollars.

3 Dall. 365-369, 1 L. 638, BROWN v. BARRY.

Syl. 1 (I, 50). Construction of repealing statutes.

Approved in Pepin Tp. v. Sage, 129 Fed. 662, 64 C. C. A. 160, applying rule under Minnesota act of 1894 to act repealing special act creating village.

Syl. 2 (I, 50). Strict construction of statutes.

Approved in Whitfield v. Aetna Life Ins. Co., 144 Fed. 360, under Rev. St. Mo. 1899, § 7896, suicide of insured, whether sane or insane, does not avoid policy unless act contemplated at time of application for policy; White etc. Pub. Co. v. Apollo Co., 139 Fed. 432, construing copyright act.

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3 Dall. 378-382, 1 L. 644, HOLLINGSWORTH v. VIRGINIA.

Syl. 1 (I, 53). President need not approve constitutional amendment.

Approved in Warfield v. Vandiver, 101 Md. 117, 60 Atl. 542, constitutional amendment need not be presented to governor before submission to people.

Syl. 2 (I, 53). Eleventh amendment, suits against state.

Approved in Alabama etc. School v. Addler, 144 Ala. 557, 42 So. 117, judgment against Alabama Girls' Industrial School is void for want of jurisdiction, as judgment against state.

3 Dall. 382-384, 1 L. 646, BINGHAM v. CABOT.

(I, 54.) Miscellaneous. Cited in Robinson v. Peru Plow etc. Co., 1 Okl. 149, 31 Pac. 990, consent cannot give jurisdiction.

3 Dall. 386-401, 1 L. 648, CALDER v. BULL.

Syl. 1 (I, 57). Ex post facto laws defined.

Approved in Rooney v. North Dakota, 196 U. S. 325, 49 L. 497, 25 Sup. Ct. 264, North Dakota act of 1903, changing place of confinement to penitentiary before execution of death penalty, is not ex post facto as applied to conviction before its passage; Goode v. State, 50 Fla. 47, 39 So. 462, statute changing rules as to sufficiency of evidence in prosecutions for violations of liquor laws ex post facto as to offense committed prior to law; State v. Tyree, 70 Kan. 205, 78 Pac. 525, where one convicted prior to Indeterminate Sentence Law of 1903, but sentence under that law, such law ex post facto as to him; State v. Rooney, 12 N. D. 150, 95 N. W. 515, act of 1903, substituting penitentiary for county jail as place of confinement pending execution, and directing executions at penitentiary, is not ex post facto as to one convicted before its passage; Ex parte Larkin, 1 Okl. 58, 25 Pac. 747, 11 L. R. A. 418, Act 1st Assem. Okl. T., § 1, continuing in force Neb. Cr. Code, is not ex post facto as to offense already committed.

Syl. 3 (I, 83). What is vested right.

Approved in Lohrstrofer v. Lohrstrofer, 140 Mich. 560, 104 N. W. 146, holding void Comp. Laws 1897, § 552, amending law requiring payment of register's fees on appeal, so as to provide for reinstatement of appeals dismissed for nonpayment, in so far as applicable to appeals dismissed prior to passage of act; Graham v. Great Falls etc. Co., 30 Mont. 400, 76 Pac. 810, preferential interest given successful contestant under 21 Stat. 140, not vested in property right.

Syl. 5 (I, 85). Statutes against social compact.

Approved in Castner v. City of Minneapolis, 92 Minn. 86, 99 N. W. 361, holding void reimbursement by city council of defeated candidate for office for expenses of contest; State v. Barrett, 138 N. C. 640,

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50 S. E. 509, upholding Laws 1903, p. 749, c. 434, making possession of more than quart of liquor prima facie evidence of keeping it for sale; Ex parte Anderson, 46 Tex. Cr. 379, 380, 390, 392, 81 S. W. 975, 976, 982, 983, city court has no jurisdiction to try accused for violation of state penal statute; dissenting opinion in Crane v. Waldron, 133 Mich. 84, 94 N. W. 597, majority upholding act 99 of 1897, relating to proof in suits in aid of execution; dissenting opinion in Battery Park Bank v. Madison County Commrs., 135 N. C. 244, 47 S. E. 1019, majority holding Laws 1903, p. 480, c. 281, relating to refunding bonds of Madison county is not mandatory.

Syl. 6 (I, 87). Exercise of judicial functions by legislature.

Approved in Ex parte Anderson, 46 Tex. Cr. 399, 81 S. W. 987, city court has no jurisdiction to try accused for violation of state statute.

3 Dall. 411-415, 1 L. 658, FOWLER v. LINDSEY.

Syl. 3 (I, 92). When certiorari lies.

Approved in Whitney v. Dick, 202 U. S. 138, 139, 50 L. 965, 966, 26 Sup. Ct. 584, certiorari cannot be issued by circuit court of appeals to review conviction in lower federal court.

IV DALLAS.

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4 Dall. 8-11, 1 L. 718, TURNER v. BANK OF NORTH AMERICA.

Syl. 1 (I, 98). Assignee's suit in federal court.

Approved in Kolze v. Hoadley, 200 U. S. 83, 50 L. 381, 26 Sup. Ct. 220, applying rule in suit to foreclose trust deed, though bill also prays for cancellation of release of trust deeds to grantor as in fraud of complainant's rights, who held deeds as collateral security for loan to trustee; Utah-Nevada Co. v. De Lamar, 133 Fed. 121, 122, 66 C. C. A. 179, federal court has no jurisdiction of suit by assignee of oral contract to recover money due thereon, where assignor could not have maintained suit in such court.

Syl. 3 (I, 99). Presumption against federal jurisdiction.

Approved in United States v. Barrett, 135 Fed. 194, federal court has no jurisdiction over action on bond of government contractor for use of materialman unless requisite citizenship and amount are affirmatively shown; Yocum v. Parker, 130 Fed. 771, 66 C. C. A. 80, averment of residence is not equivalent to one of citizenship for purpose of federal jurisdiction; Robinson v. Peru Plow etc. Co., 1 Okl. 149, 21 Pac. 990, upholding territorial court's jurisdiction over suit, though petition incorrectly described court as federal court.

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Syl. 4 (I, 100). Limitations on federal jurisdiction.

Approved in Stevenson v. Fain, 195 U. S. 167, 49 L. 143, 25 Sup. Ct. 6, circuit court of appeal decisions in controversy between citizens of different states is final, though parties claimed title to property in controversy under grants from different states.

4 Dall. 22-27, 1 L. 724, COURSE v. STEAD.

Syl. 3 (I, 106). Judicial notice of state laws.

See 113 Am. St. Rep. 873, note.

I CRANCH.

1 Cr. 1-45, 2 L. 15, TALBOT v. SEEMAN.

Syl. 6 (I, 109). Proof of foreign laws.

See 113 Am. St. Rep. 874, 884, note.

1 Cr. 45-103, 2 L. 29, WILSON v. MASON.

Syl. 5 (I, 112). Trustee—Requisition of title—Notice of equity.

Approved in Johnson v. Georgia Loan etc. Co., 141 Fed. 597, bona fide purchaser of lands which had been previously conveyed by grantor must allege and prove want of notice and actual payment of money independently of recitals in deed.

1 Cr. 103-110, 2 L. 49, UNITED STATES v. SCHOONER PEGGY.

Syl. 5 (I, 113). Effect of change of law pending appeal.

Approved in dissenting opinion in Chicago etc. R. R. Co. v. People, 219 Ill. 413, 76 N. E. 572, 3 L. R. A. (N. S.) 508, majority holding where supreme court finally adjudges particular tax invalid, legislature cannot validate levy and make tax collectible.

1 Cr. 117-137, 2 L. 53, TURNER v. FENDALL.

Syl. 5 (I, 115). Execution, on what leviable.

Approved in Commerce Vault Co. v. Barrett, 222 Ill. 176, 177, 78 N. E. 48, 49, where mortgaged leasehold was sold on foreclosure and holder of judgment against mortgagor, obtained after foreclosure redeemed, had leasehold resold, other judgments obtained by judgment creditor after resale are not lien on excess.

1 Cr. 137-180, 2 L. 60, MARBURY v. MADISON.

Syl. 1 (I, 118). Supreme court's jurisdiction limited by constitution.

Approved in Ex parte Cox, 44 Fla. 540, 33 So. 510, 61 L. R. A. 734, writ of error does not lie from supreme court to review judgment

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in habeas corpus rendered by justice thereof in habeas corpus; Sanders v. Commonwealth, 117 Ky. 7, 111 Am. St. Rep. 222, 77 S. W. 359, 1 L. R. A. (N. S.) 932, upholding act of 1899, prohibiting sale of milk from cows fed on distillery slop.

Syl. 2 (I, 127). What is appellate jurisdiction.

Approved in Ex parte Moran, 144 Fed. 596, determining power of circuit court of appeals to issue habeas corpus to inquire into power of Oklahoma court in capital cases; State v. Ausherman, 11 Wyo. 425, 72 Pac. 202, upholding jurisdiction of supreme court to issue prohibition to restrain action of inferior court in excess of its jurisdiction.

Syl. 3 (I, 131). Mandamus, when lies.

Approved in Wadsworth v. Boysen, 148 Fed. 780, denying jurisdiction of suit to enjoin Indian agent from obstructing complainant from prospecting on reservation lands; Barber Asphalt Pav. Co. v. Morris, 132 Fed. 955, 66 C. C. A. 55, 67 L. R. A. 761, upholding power of circuit court of appeals to issue mandamus where lower federal court stayed all proceedings until determination of matter by state court; State ex rel. Higdon v. Jelks, 138 Ala. 121, 35 So. 61, denying mandamus to compel governor to reinstate national guard officer; Traynor v. Beckham, 116 Ky. 24, 74 S. W. 1107, mandamus lies to governor to compel issuance of commission to police judge legally appointed by city council; McDaid v. Territory, 1 Okl. 98, 30 Pac. 440, granting mandamus to compel townsite trustees to execute deed to contestant they have decided is entitled to deed; Clement v. Graham, 78 Vt. 319, 63 Atl. 155, granting mandamus on petition of taxpayer to compel state auditor to permit inspection of vouchers in his office; State v. Brooks, 14 Wyo. 412, 84 Pac. 490, upholding jurisdiction to issue mandamus to compel governor to issue certificate of election as state treasurer.

Syl. 4 (I, 144). When right to appointive office complete.

Approved in Harrington v. Pardee, 1 Cal. App. 280, 82 Pac. 84, under St. 1887, p. 67, c. 57, appointment is not complete until commission is issued.

Syl. 7 (I, 153). Review of executive acts.

Approved in Atkinson v. Woodmansee, 68 Kan. 81, 90, 74 Pac. 644, 647, 64 L. R. A. 325, holding void Gen. St. 1901, § 5125, permitting recovery of attorneys' fees as costs in mechanics' liens cases. See 98 Am. St. Rep. 874, note.

Syl. 8 (I, 156). Duty of courts to declare statutes void.

Approved in Hume v. Laurel Hill Cemetery, 142 Fed. 563, holding void San Francisco ordinance prohibiting burials within city limits; Ex parte Anderson, 46 Tex. Cr. 390, 391, 81 S. W. 981, 982, city court has no jurisdiction to try accused for violation of state penal statute; State v. Chittenden, 127 Wis. 519, 521, 107 N. W. 517, 518,

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construing dental act; dissenting opinion in State v. Moore, 76 Ark. 206, 88 S. W. 884, majority upholding state guard appropriation act of 1905.

Distinguished in Higgins v. Tax Assessors of Pawtucket, 27 R. I. 405, 63 Atl. 36, upholding Practice Act 1905, p. 4, § 12, giving superior court jurisdiction in cases of prerogative writs.

1 Cr. 252-259, 2 L. 98, UNITED STATES v. SIMMS.

(I, 165.) Instance of appellate jurisdiction in criminal case.

Distinguished in New v. Oklahoma, 195 U. S. 256, 49 L. 184, 25 Sup. Ct. 68, supreme court cannot review judgment of Oklahoma supreme court in capital cases.

1 Cr. 259-282, 2 L. 101, FENWICK v. SEARS.

Syl. 1 (I, 167). Suit by foreign administrator.

Distinguished in Moore v. Petty, 135 Fed. 673, 68 C. C. A. 306, executor may sue in state other than that of appointment to recover from his agents proceeds of sale of land belonging to decedent's estate.

1 Cr. 299-309, 2 L. 115, STUART v. LAIRD.

Syl. 3 (I, 168). Contemporaneous statutory construction.

Approved in State v. Bryan, 50 Fla. 390, 39 So. 960, construing school laws; State v. New Orleans Ry. & Light Co., 116 La. 148, 40 So. 598, where under same provisions in two constitutions exempting manufacturers from license taxes, legislature has for more than twenty years licensed electric light companies, construction entitled to weight; State v. Northern Pac. Ry. Co., 95 Minn. 47, 103 N. W. 732, foreign railroad, paying taxes under gross earnings law, not prevented by failure to list credits from deducting debts from such credits; Henry v. State, 87 Miss. 57, 58, 39 So. 871, Acts 1900, p. 63, c. 56, relating to occupancy of lands by convicts, does not repeal Rev. Code 1892, § 3201, providing for leasing of lands acquired by prison board; Ex parte Anderson, 46 Tex. Cr. 399, 81 S. W. 987, city court has no jurisdiction to try accused for alleged violation of state penal statute; State v. Stimpson, 78 Vt. 132, 62 Atl. 17, 1 L. R. A. (N. S.) 1153, upholding statute permitting prosecution by information all crimes except those punishable by death or life imprisonment.

1 Cr. 343, 2 L. 129, ABERCROMBIE v. DUPUIS.

Syl. 1 (I, 177). Necessity for averment of citizenship.

Approved in Kansas City etc. Ry. Co. v. Prunty, 133 Fed. 16, 66 C. C. A. 163, right to remove to federal court on ground of diverse citizenship not shown by mere averment of residence.

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II CRANCH.

2 Cr. 9, 2 L. 191, WOOD v. WAGNON.

(I, 182.) Miscellaneous. Cited in Robinson v. Peru Plow etc. Co., 1 Okl. 149, 31 Pac. 990, consent cannot give jurisdiction.

2 Cr. 126, 2 L. 229, CAPRON v. VAN NOORDIN.

Syl. 1 (I, 187). Record must show citizenship.

Approved in Utah-Nevada Co. v. De Lamar, 133 Fed. 121, 66 C. C. A. 179, federal court has no jurisdiction of suit by assignee of oral contract to recover money due thereon unless record shows assignor could sue therein; Myers v. Berry, 3 Okl. 618, 41 Pac. 582, denying equity jurisdiction over petition to annul action of townsite trustees in disposing of lot where findings on which action based and allegations of fraud are not set out.

Syl. 2 (I, 189). Assignability of want of jurisdiction by plaintiff.

Approved in International etc. R. Co. v. Hoyle, 149 Fed. 182, following rule; Alexander v. Crollott, 199 U. S. 581, 50 L. 317, 26 Sup. Ct. 161, New Mexico territorial supreme court may refuse to restrain justice of peace from taking further proceedings in unlawful detainer.

2 Cr. 127-169, 2 L. 229, HEAD v. PROVIDENCE INS. CO.

Syl. 1 (I, 189). Corporate powers derived from charter.

Approved in Silver v. Indiana State Board, 35 Ind. App. 459, 72 N. E. 836, construing statutes relating to revision of school books; St. Louis Police etc. Assn. v. Tierney, 116 Mo. App. 460, 463, 91 S. W. 971, 972, construing mutual police association's constitution relative to designation of beneficiary on third day after admission; Paul v. Seattle, 40 Wash. 330, 82 Pac. 604, under Seattle Charter, art. 4, §§ 27, 28, fact that benefit of irregularly executed contract has been received by city does not estop it from denying liability thereon.

2 Cr. 170-179, 2 L. 243, LITTLE v. BARREME.

Syl. 1 (I, 194). Illegal acts by order of superior.

Approved in O'Reilly De Camara v. Brooke, 135 Fed. 387, military governor of Cuba appointed pursuant to treaty of Paris is liable for damages caused by order abolishing franchise to slaughter cattle in Havana.

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2 Cr. 180-185, 2 L. 246, DUNLOP v. BALL.

Syl. 1 (I, 195). Payment presumed from lapse of time.

Approved in Cobb v. Houston, 117 Mo. App. 655, 94 S. W. 302, under act providing that judgment presumed paid after twenty years, but that presumption may be repelled by written acknowledgment or proof of part payment, absence from state does not prevent running of time in favor of presumption.

2 Cr. 187-239, 2 L. 249, CHURCH v. HUBBART.

Syl. 4 (I, 196). Proof of foreign laws.

See 113 Am. St. Rep. 881, 884, note.

2 Cr. 240-271, 2 L. 266. MASON v. SHIP BLAIREAU.

Syl. 5 (I, 201). Salvage to sailor on abandonment.

Approved in The Eliza Lines, 199 U. S. 127, 50 L. 119, 26 Sup. Ct. 8, abandonment of vessel entitles cargo owners to refuse to go on with voyage where master has not obtained vessel from salvors before cargo owners have announced decision.

Syl. 6 (I, 202). Admiralty jurisdiction over salvage.

Approved in Disconto Gesellschaft v. Umbreit, 127 Wis. 660, 106 N. W. 823, where German corporation obtained judgment in Wisconsin against nonresident alien, on cause of action accruing in Germany, corporation could not impound, by ancillary remedies in Wisconsin, property of debtor there, as against Wisconsin creditor whose cause of action subsequently accrued.

2 Cr. 336-342, 2 L. 297, ADAMS v. WOODS.

Syl. 1 (I, 205). Limitations against penal actions.

Approved in Carter v. New Orleans etc. R. Co., 143 Fed. 101, action against carrier for damages for unlawful discrimination is governed by Rev. St., § 1047, and is barred in five years.

2 Cr. 358-405, 2 L. 304, UNITED STATES v. FISHER.

Syl. 1 (I, 207). Statutory construction—Title.

Approved in Farmers' Loan etc. Co. v. Sioux Falls, 131 Fed. 908, under Const. S. D., art. 13, § 4, city indebted to nearly fifteen per cent of assessed value of property could not issue bonds so as to increase debt to twenty-three per cent; Choctaw etc. R. R. Co. v. Alexander, 7 Okl. 583, 584, 595, 52 Pac. 945, 54 Pac. 422, construing act regulating prairie fires; Osgood v. Central Vermont Ry. Co., 77 Vt. 340, 60 Atl. 139, 70 L. R. A. 930, under statute providing for imprisonment of agent of railroad whose negligence causes injury, but not exempting liability for damages, lessor of part of right of way for coalsheds under agreement for indemnity for negligence

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of railroad's servants, cannot recover for negligent running of engine against shed; Anable v. Montgomery County Commrs., 34 Ind. App. 78, 107 Am. St. Rep. 173, 71 N. E. 274, arguendo.

2 Cr. 419-444, 2 L. 324, GRAVES v. BOSTON MARINE INS. CO.

Syl. 3 (I, 216). Equity—Adequate legal remedy.

Approved in Allen v. Myers, 1 Alaska, 117, applying rule in suit to quiet title to mining claim.

2 Cr. 445-453, 2 L. 332, HEPBURN v. ELLZEY.

Syl. 1 (I, 216). Citizens of state—Federal suits.

Approved in Ex parte Massachusetts, 197 U. S. 487, 49 L. 848, 25 Sup. Ct. 512, denying prohibition as ancillary to suit between citizen of District of Columbia and citizens of another state; Iowa etc. Min. Co. v. Bliss, 144 Fed. 455, where alien sued nonresident guaranty corporation on bond in which principal held guaranty company harmless from liability on bond, and in same action plaintiff sought to hold principal for the embezzlement for which bond sued on, controversy was removable, regardless of principal's citizenship; Laden v. Meck, 130 Fed. 879, 65 C. C. A. 361, allegation in removal petition that certain of petitioners are residents of state other than that of plaintiff's citizenship, and that none of petitioners are residents and citizens of state whereof plaintiff is citizen, is insufficient; Robinson v. Peru Plow etc. Co., 1 Okl. 149, 31 Pac. 991.

III CRANCH.

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3 Cr. 97-139, 2 L. 377, LAMBERT v. PAINE.

(X, 223.) Miscellaneous. Cited in Johnson v. Georgia Loan etc. Co., 141 Fed. 597, bona fide purchaser of lands previously conveyed by grantor must allege and prove want of notice and payment of purchase money independently of recitals in deed.

3 Cr. 159-174, 2 L. 397, UNITED STATES v. MORE.

Syl. 1 (I, 225). Supreme court's appellate jurisdiction.

Approved in New v. Oklahoma, 195 U. S. 256, 49 L. 184, 25 Sup. Ct. 68, supreme court cannot review Oklahoma judgment in capital case; Bradford v. Southern Ry. Co., 195 U. S. 250, 49 L. 181, 25 Sup. Ct. 55, writ of error in forma pauperis cannot be prosecuted from circuit court of appeals; Ex parte Moran, 144 Fed. 598, 600, determining jurisdiction of circuit court of appeals to issue habeas corpus to determine power of Oklahoma court to imprison one convicted of capital crime.

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Syl. 2 (I, 226). Supreme court—Criminal appeals.

Approved in Albright v. New Mexico, 200 U. S. 12, 50 L. 347, 26 Sup. Ct. 210, supreme court cannot review judgment of territorial court in quo warranto.

3 Cr. 220-228, 2 L. 417, MILLIGAN v. MILLEDGE.

Syl. 2 (I, 232). Equity—Sufficiency of plea.

Approved in Glucose etc. Co. v. Douglass, 145 Fed. 950, plea of noninfringement of patent is not good in suit in equity.

3 Cr. 267, 268, 2 L. 435, STRAWBRIDGE v. CURTISS.

Syl. 1 (I, 235). Courts—Diverse citizenship.

Approved in Sweeney v. Carter Oil Co., 199 U. S. 257, 50 L. 180, 26 Sup. Ct. 55, two citizens of different states may sue citizen of third state in federal district of latter's residence; Anderson v. Barsman, 140 Fed. 11, circuit court has no jurisdiction of suit against several defendants to enjoin diversion of water, where one of defendants is citizen of same state as complainant.

3 Cr. 270-282, 2 L. 436, McFERRAN v. TAYLOR.

Syl. 1 (I, 238). Vendor bound by description.

Approved in Kell v. Trenchard, 142 Fed. 23, where option for purchase of timber land stated minimum quantity, and agent of vendor by fraudulent representations as to boundaries induced vendee to make false estimate, vendee entitled to abatement of price.

3 Cr. 293-298, 2 L. 444, BUDDICUM v. KIRK.

Syl. 2 (I, 240). Depositions—Notice—Adjournments.

Distinguished in Mann v. County Court, 58 W. Va. 661, 52 S. E. 779, determining power of court to adjourn to distant day.

3 Cr. 300-311, 2 L. 446, SIMMS v. SLACUM.

Syl. 1 (I, 241). Effect of fraudulent judgment.

Approved in dissenting opinion in Haddock v. Haddock, 201 U. S. 627, 50 L. 893, 26 Sup. Ct. 525, majority holding mere domicile within state of one party to marriage does not give courts of that state jurisdiction to render decree of divorce enforceable in all other states against nonresident only constructively served.

3 Cr. 319-324, 2 L. 453, DIXON v. RAMSAY.

Syl. 1 (I, 245). Suit by foreign administrator.

Distinguished in Moore v. Petty, 135 Fed. 673, 68 C. C. A. 306, executor may sue in foreign state to recover from agent proceeds of sale of decedent's realty.

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Syl. 5 (I, 246). Law governing will contest.

Approved in Clark v. Eltinge, 38 Wash. 383, 107 Am. St. Rep. 858, 80 Pac. 559, in action against husband and wife to recover balance due on mortgage debt incurred while defendants were nonresidents, liability of wife depends on law of state of residence at time debt created.

3 Cr. 331-337, 2 L. 457, WISE v. WITHERS.

Syl. 1 (I, 247). Conclusiveness of court-martial's decree.

Approved in Hamilton v. McClaughry, 136 Fed. 447, where on return to habeas corpus respondent justified under judgment of court-martial, burden is on him to show judgment based on positive law.

3 Cr. 337-356, 2 L. 459, UNITED STATES v. GRUNDY.

Syl. 1 (I, 250). Vesting of title—Election of remedies.

Approved in Chapman v. Mill Creek etc. Coke Co., 54 W. Va. 198, 46 S. E. 264, where deed reserved to grantors and heirs use of any of coal banks that they may select and there were six coal veins in land, there was reservation of title in coal.

Distinguished in dissenting opinion in Chapman v. Mill Creek etc. Coke Co., 54 W. Va. 202, 46 S. E. 266, majority holding when deed reserved to grantors use of coal banks that they may select, and there were six coal veins in land, there was no reservation of title in coal.

3 Cr. 399-414, 2 L. 479, UNITED STATES v. HETH.

Syl. 1 (I, 252). Retroactive construction of statutes.

Approved in Jones v. Stockgrowers' Nat. Bank, 17 Colo. App. 83, 67 Pac. 179, Laws 1891, p. 246, providing that final judgments are to be considered paid in full after ten years from rendition unless revived, does not apply to judgments existing at its passage.

3 Cr. 448-453, 2 L. 495, EX PARTE BURFORD.

Syl. 1 (I, 254). Supreme court's jurisdiction on habeas corpus.

Approved in Ex parte Moran, 144 Fed. 600, determining power of circuit court of appeals to issue habeas corpus where one was imprisoned on conviction of capital crime in Oklahoma.

(I, 254.) Miscellaneous. Cited in Hyde v. Shine, 199 U. S. 85, 50 L. 98, 25 Sup. Ct. 760, as to power of circuit court to issue certiorari auxiliary to habeas corpus.

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IV CRANCH.

4 Cr. 2-29, 2 L. 531, JENNINGS v. CARSON.

(I, 260.) Miscellaneous. Cited in Erie etc. Transp. Co. v. Erie R. Co., 142 Fed. 12, decree in suit for damages by collision is conclusive.

4 Cr. 46, 47, 2 L. 545, MONTALIT v. MURRAY.

Syl. 3 (I, 263). Federal courts—Suit by indorsee.

Approved in Utah-Nevada Co. v. De Lamar, 133 Fed. 122, 66 C. C. A. 179, assignee of oral contract to recover money due thereon cannot sue in federal court unless record shows assignor could sue therein.

4 Cr. 75-137, 2 L. 554, EX PARTE BOLLMAN & SWARTWOUT.

Syl. 1 (I, 266). Courts of limited jurisdiction.

Approved in Kentucky v. Powers, 201 U. S. 24, 50 L. 644, 26 Sup. Ct. 387, denial, in summoning or impaneling jurors of any civil rights secured by federal laws, does not, unless justified by state law, give right to remove criminal prosecution.

Syl. 7 (I, 269). Habeas corpus—Necessity for commitment.

Approved in Whitney v. Dick, 202 U. S. 136, 50 L. 964, 26 Sup. Ct. 584, circuit courts of appeal have no power to issue original and independent writs of habeas corpus; Ex parte Moran, 144 Fed. 599, 600, 601, determining jurisdiction of circuit court of appeals to issue habeas corpus to review power of Oklahoma court to imprison one convicted of capital crime.

Syl. 12 (I, 271). Venue of offenses out of state.

Approved in Kerr v. Shine, 136 Fed. 64, 69 C. C. A. 69, where offense committed on high seas and offender not arrested until found in California, he must be tried there, though vessel on which offense committed had touched at Hawaii, where warrant issued though unexecuted.

Syl. 13 (I, 271). Certiorari as ancillary to habeas corpus.

Approved in Hyde v. Shine, 199 U. S. 85, 50 L. 98, 25 Sup. Ct. 760, refusal of circuit court to grant certiorari as ancillary to habeas corpus, being discretionary, is not assignable as error.

4 Cr. 179, 180, 2 L. 287, DIGGS v. WOLCOTT.

Syl. 1 (I, 275). Injunction against state court.

Approved in Security Trust Co. v. Union Trust Co., 134 Fed. 302, refusing to enjoin sale under state decree, where court of competent

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jurisdiction had appointed receiver in proceedings to foreclose railroad mortgage and directed sale.

Distinguished in Shaw v. Frey, 69 N. J. Eq. 324, 59 Atl. 812, state court may compel discovery from one under its jurisdiction of matters necessary to trial of federal action and may for that purpose restrain prosecution of federal action pending discovery.

4 Cr. 224-236, 2 L. 603, GRANT v. NAYLOR.

Syl. 1 (I, 283). Parol evidence to explain guaranty.

Approved in Bank of Seneca v. First Nat. Bank, 105 Mo. App. 725, 78 S. W. 1093, where bank cashed check without knowledge of existence of letter of credit addressed "To Whom It May Concern," it cannot have amount of check credited against amount named in letter.

4 Cr. 237, 238, 2 L. 607, WOODS v. YOUNG.

Syl. 1 (I, 285). Refusal of continuance discretionary.

Approved in Clement v. United States, 149 Fed. 312, upholding denial of continuance because of age and physical infirmity of accused.

4 Cr. 241-293, 2 L. 608, ROSE v. HIMELY.

Syl. 1 (I, 286). Conclusiveness of foreign judgment.

Approved in National Exchange Bank v. Wiley, 195 U. S. 263, 49 L. 187, 25 Sup. Ct. 70, judgment under warrant of attorney annexed to note authorizing confession of judgment in favor of holder is collaterally attackable on ground that party in whose behalf it was rendered was not real owner of note; dissenting opinion in United States v. Ju Toy, 198 U. S. 276, 49 L. 1049, 25 Sup. Ct. 644, majority upholding conclusiveness of decision of immigration officers denying right of citizen of Chinese descent to enter United States; dissenting opinion in Jordan v. Chicago etc. Ry. Co., 125 Wis. 591, 110 Am. St. Rep. 865, 1 L. R. A. (N. S.) 885, 104 N. W. 807, majority holding determination of county court on petition for letters by public administrator where deceased left no kin, that deceased left property in state, is conclusive on collateral attack.

4 Cr. 293-298, 2 L. 625, HUDSON v. GUESTIER.

Syl. 2 (I, 291). Seizure—Jurisdiction of res in neutral port.

Approved in Orient Ins. Co. v. Rudolph, 69 N. J. Eq. 579, 61 Atl. 31, production and proof in New Jersey court of order by New York court appointing receiver in supplementary proceedings and reciting necessary jurisdictional facts is conclusive of validity of order.

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4 Cr. 317-321, 2 L. 633, MAYOR ETC. OF ALEXANDRIA v. PATTEN.

Syl. 1 (I, 294). Application of payments.

Approved in City of Lincoln v. Lincoln St. R. Co., 67 Neb. 492, 93 N. W. 774, applying rule to payment of taxes; People v. Grant, 139 Mich. 28, 102 N. W. 227, in absence of designation by debtor to which of several accounts payment shall apply, creditor may make application at any time before suit.

4 Cr. 347-366, 2 L. 643, PEISCH v. WARE.

Syl. 1 (I, 299). Forfeitures—Duty on derelict goods.

Approved in United States v. One Black Horse, 129 Fed. 168, livery rig used wholly in United States to transport smuggled goods is subject to forfeiture, though liveryman had no knowledge of purpose for which team used.

Distinguished in Moody v. McKinney, 73 S. C. 442, 53 S. E. 545, where plaintiffs did not consent to or know of property being used to transport liquor in night-time, contrary to law, it is not subject to seizure and confiscation.

4 Cr. 403-414, 2 L. 660, STEAD v. COURSE.

Syl. 1 (I, 303). Sufficiency of plea in bar.

Approved in Barber v. National Carbon Co., 129 Fed. 377, 64 C. C. A. 40, applying rule to plea to bill for infringement of patent.

(I, 303.) Miscellaneous. Cited in Ocala etc. Works v. Lester, 49 Fla. 369, 38 So. 62, when replication filed to plea, defendant must prove facts which plea suggests.

4 Cr. 421-433, 2 L. 666, POLLARD v. DWIGHT.

Syl. 1 (I, 306). Appearance as waiver of service.

Approved in dissenting opinion in Fisher v. Crowley, 57 W. Va. 329, 50 S. E. 429, majority holding defendant appearing in court of record to quash defective summons need not recite that appearance is for that purpose only to avoid waiver.

Syl. 3 (I, 308). Construction of state statutes.

Approved in Yocum v. Parker, 134 Fed. 211, 67 C. C. A. 227, applying rule in construing will under Missouri laws.

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V CRANCH.

5 Cr. 11-13, 3 L. 22, HENDERSON v. MOORE.

Syl. 1 (I, 312). Effect of receipt in full.

See 100 Am. St. Rep. 430, note.

Syl. 2 (I, 313). Denial of new trial not error.

Approved in Hanaway v. Guarantee etc. Invest. Co., 143 Fed. 962, where application for new trial was based on matters of fact aliunde record and on errors not incorporated in bill of exceptions, question as to new trial not reviewable.

5 Cr. 13-15, 3 L. 22, COOKE v. WOODROW.

Syl. 3 (I, 315). Appeal—Determination of value in dispute.

Approved in Phoenix Wholesale Meat Co. v. Moss, 7 Ariz. 276, 64 Pac. 443, applying rule to appeal in suit for compensation for meat inspection.

5 Cr. 22-34, 3 L. 25, McKEEN v. DELANCY.

Syl. 2 (I, 319). Following state statutory construction.

Approved in Reed v. Munn, 148 Fed. 749, under Colorado statutes and decisions, equitable interest of beneficial owners under trust conveyance of conflicting interests in mining locations was subject to execution.

5 Cr. 34-45, 3 L. 29, TUCKER v. OXLEY.

Syl. 1 (I, 320). Bankruptcy—Setoff of joint debt.

Distinguished in In re Shults, 132 Fed. 575, solvent partnership which is indebted to bankrupt cannot set off against such indebtedness a claim due from bankrupt estate to one of partners.

5 Cr. 57-61, 3 L. 36, HOPE INS. CO. v. BOARDMAN.

Syl. 2 (I, 324). Courts—Citizenship of corporation.

Approved in Doctor v. Harrington, 196 U. S. 586, 49 L. 609, 25 Sup. Ct. 355, presumption that stockholders are citizens of state of creation of corporation does not preclude them from asserting actual citizenship to sustain federal jurisdiction when sued as stockholders; United States v. Milwaukee etc. Transit Co., 142 Fed. 253, where corporation organized and owned by officers and stockholders of another, and was used merely as dummy to get rebates from carriers, they are treated as identical.

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5 Cr. 61-92, 3 L. 38, UNITED STATES BANK v. DEVEAUX.

Syl. 2 (I, 325). Right to sue in federal court.

Approved in Stevenson v. Fain, 195 U. S. 168, 49 L. 143, 25 Sup. Ct. 6, circuit court of appeals decree is final in controversy between diverse citizens claiming under grants from different states.

Syl. 4 (I, 326). Corporation not citizen.

Approved in Davis v. Chesapeake etc. Ry. Co., 116 Ky. 151, 75 S. W. 277, compliance by foreign railroad with Kentucky laws requiring them to become corporations in accordance with local laws before doing business therein does not make it citizen thereof so as to prevent removal to federal court.

Syl. 5 (I, 328). Averment of citizenship of stockholders.

Approved in Doctor v. Harrington, 196 U. S. 586, 49 L. 609, 25 Sup. Ct. 355, presumption that stockholders are citizens of state of creation of corporation does not preclude them from asserting actual citizenship to sustain federal jurisdiction when sued as stockholders.

5 Cr. 115-141, 3 L. 53, UNITED STATES v. PETERS.

Syl. 1 (I, 330). Federal jurisdiction over state's suits.

Approved in Board of Education v. Volk, 72 Ohio St. 486, 74 N. E. 650, arguendo.

5 Cr. 142-154, 3 L. 61, VIOLETT v. PATTON.

Syl. 2 (I, 333). Consideration defined.

Approved in White etc. Mach. Co. v. Fowler, 28 Nev. 110, 78 Pac. 1035, bond showing that it is to enable principal to obtain extension of credit is on sufficient consideration to bind sureties.

5 Cr. 173-187, 3 L. 70, KEMPE v. KENNEDY.

Syl. 3 (I, 337). Judgments—Record showing jurisdiction.

Approved in Edelstein v. United States, 149 Fed. 638, judgment of bankruptcy courts are not collaterally attackable.

Syl. 4 (I, 338). Judgment valid till reversed.

Approved in Alexander v. Crollott, 199 U. S. 581, 50 L. 317, 26 Sup. Ct. 161, New Mexico territorial supreme court is justified in refusing to restrain justice of peace from further proceedings in unlawful detainer, where right of appeal exists; Taylor v. Huntington, 34 Wash. 458, 459, 75 Pac. 1105, judgment of court of general jurisdiction foreclosing tax lien not vacated in motion because affidavit of publication of notice defective.

5 Cr. 262-280, 3 L. 96, HEPBURN v. AULD.

Syl. 3 (I, 346). Specific performance—Time not of essence.

Approved in Hosmer v. Wyoming Ry. & I. Co., 129 Fed. 892, 65 L. R. A. 81, applying rule to sale of mining property; Gibson v.

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Brown, 214 Ill. 336, 73 N. E. 580, applying rule to exchange of realty for stock of merchandise.

Distinguished in Day v. Mountin, 137 Fed. 762, 763, 70 C. C. A. 190, contract for sale of land made in good faith may be specifically enforced by vendor, though he did not have title at time it was made, where such fact known, and he acquired title before time for performance.

5 Cr. 280, 281, 3 L. 101, UNITED STATES v. EVANS.

Syl. 1 (I, 348). Voluntary nonsuit—Refusal to reinstate.

Approved in Francisco v. Chicago etc. R. Co., 149 Fed. 355, 356, where, at close of trial, defendant moved for instructed verdict and motion granted, but before instruction given plaintiff took involuntary nonsuit, he cannot take error.

5 Cr. 281-284, 3 L. 101, YEATON v. UNITED STATES.

Syl. 2 (I, 349). Repeal of penal statute.

Approved in Pensacola etc. R. R. Co. v. State, 45 Fla. 89, 110 Am. St. Rep. 69, 33 So. 986, following rule; Ex parte Larkin, 1 Okl. 55, 58, 25 Pac. 746, 11 L. R. A. 418, arguendo.

Syl. 3 (I, 349). Effect of repeal of penal law.

Approved in Atwood v. Buckingham, 78 Conn. 425, 62 Atl. 617, repeal of Gen. St. 1902, § 324, relating to recovery of penalty from administrator for failure to file inventory within one year before suit to recover penalty, did not affect pending actions; Terry v. McClung, 104 Va. 601, 52 S. E. 356, passage of act of 1888 depriving county court of jurisdiction in void cases caused pending cases to lapse.

Syl. 4 (I, 351). Admiralty appeal tried de novo.

Approved in The San Rafael, 141 Fed. 275, fact that claimants did not appeal does not alter rule.

5 Cr. 288, 289, 3 L. 103, LOGAN v. PATRICK.

Syl. 1 (I, 353). Enjoining action at law.

Approved in Campbell v. Golden Cycle Min. Co., 141 Fed. 613, upholding federal jurisdiction of dependent suit in equity where no federal question or diverse citizenship shown.

5 Cr. 289-302, 3 L. 104, HARRISON v. STERRY.

Syl. 1 (I, 355). Contracts—Law governing.

Approved in In re Brannock, 131 Fed. 820, record of mortgage in state of mortgagor's residence is not notice to creditors of mortgagor where property located in another state; Holshouser v. Gold Hill Copper Co., 138 N. C. 255, 50 S. E. 653, 70 L. R. A. 183, New Jersey statute declaring that annual corporation license fee shall

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be preferred debt in case of insolvency is not binding in another state; Greenville Nat. Bank v. Evans-Snyder-Buel Co., 9 Okl. 364, 60 Pac. 253, mortgage executor in another state on property located therein and duly filed according to laws of such state is valid after property brought into Oklahoma without being filed with register of county to which property brought; Snyder v. Yates, 112 Tenn. 313, 105 Am. St. Rep. 941, 79 S. W. 796, 64 L. R. A. 353, chattel mortgage executed and recorded in Illinois on property afterward transferred to Tennessee does not give priority over liens of local attaching creditors.

5 Cr. 303, 3 L. 108, BROWN v. STRODE.

Syl. 1 (I, 360). Federal courts—Citizenship—Nominal parties.

Cited in Burrell v. United States, 147 Fed. 46, suit by materialman, in name of United States, under 28 Stat. 278, relating to contractor's bonds, cannot be brought in federal courts where real party has not requisite citizenship; United States v. Churchyard, 132 Fed. 83, suit by materialmen, in name of United States, under 28 Stat. 278, relating to contractors' bonds, may be brought in federal court regardless of citizenship of parties or amount in controversy.

5 Cr. 351-358, 3 L. 123, MOSS v. RIDDLE.

Syl. 2 (I, 374). Fraud—Averment of intention.

Approved in Cella v. Brown, 144 Fed. 754, mere allegation that plan of reorganization between two railroads was fraudulently designed, without specifically charging that said companies participated therein or specifying in what fraud consisted, is insufficient; Williamson v. Beardsley, 137 Fed. 469, 69 C. C. A. 615, in suit to set aside conveyances of realty by executor, mere allegations that sales were fraudulent, and that proceedings were fraudulently conducted, without averment of substantive facts constituting fraud, are insufficient.

5 Cr. 368-372, 3 L. 128, UNITED STATES v. VOWELL.

Syl. 1 (I, 377). When duties on imports accrue.

Approved in United States v. Hartwell Lumber Co., 142 Fed. 436, where merchandise was imported shortly before act of 1897 went into effect, and importers tendered entry before importation complete, which tender was rejected, and not renewed till after act was effective, provisions of section 33 of said act governed; Ellison v. United States, 136 Fed. 972, imported merchandise entered at one port for immediate transportation to another cannot be entered for consumption at latter port before its arrival within limits of that port.

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VI CRANCH.

6 Cr. 8-29, 3 L. 136, FIELD v. HOLLAND.

Syl. 6 (I, 382). Application of payments by court.

Approved in Wardlaw v. Troy Oil Mill, 74 S. C. 371, 54 S. E. 659, where manufacturer sells brick to be used on building, and without notice to him, part of brick sold, he may apply payments made on account by purchaser to unsecured part of purchase price.

6 Cr. 82-86, 3 L. 160, LEWIS v. HARWOOD.

Syl. 1 (I, 387). Assignability of bond.

Cited in Crist v. McDaniel, 15 Okl. 471, 82 Pac. 992, arguendo.

6 Cr. 87-148, 3 L. 162, FLETCHER v. PECK.

Syl. 4 (I, 389). Pleadings amendable in supreme court.

Approved in Kansas City etc. Ry. Co. v. Prunty, 133 Fed. 17, 66 C. C. A. 163, circuit court of appeals may permit amendment in that court of removal petition by supplying requisite averment of citizenship inadvertently omitted, where parties consent.

Distinguished in Fred Macey Co. v. Macey, 135 Fed. 729, 68 C. C. A. 363, amendment showing citizenship of parties cannot be made in circuit court after removal, though parties consent.

Syl. 6 (I, 390). Statutes upheld in case of doubt.

Approved in Board of Commrs. v. Tollman, 145 Fed. 767, upholding Laws N. C. 1885, p. 439, c. 233, incorporating railroad and authorizing issuance of county aid bonds; United States v. Union Bridge Co., 143 Fed. 389, unholding 30 Stat. 1153, relating to alteration of bridges; State v. Jack, 69 Kan. 402, 76 Pac. 916, 1 L. R. A. (N. S.) 167, witness cannot refuse to testify as to his knowledge of violations of anti-trust act on ground that § 10 does not grant him immunity from prosecutions under federal anti-trust law; Ex parte Kair, 28 Nev. 146, 80 Pac. 466, upholding Stat. 1903, p. 33, c. 10, imposing penalty on person working more than eight hours per day in any mine or ore-mill; Kadderly v. Portland, 44 Or. 143, 74 Pac. 719, upholding initiation and referendum amendment to constitution; Highland Boy etc. Min. Co. v. Strickley, 28 Utah, 231, 107 Am. St. Rep. 711, 78 Pac. 297, upholding Sess. Laws 1901, p. 19, c. 25, relating to condemnation for tramways for operation of mines; Whitlock v. Hawkins, 105 Va. 249, 53 S. E. 403, upholding act of 1906, validat-

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ing acts done under amending Code, c. 23, relating to assessments of lands; National Council etc. v. State Council, 104 Va. 202, 51 S. E. 168, upholding Feb. 17, 1900, creating corporation with exclusive authority to grant charters to subordinate councils, thereby annulling prior right of foreign corporation to transact business of order in state; dissenting opinion in Allen v. Reed, 10 Okl. 160, 63 Pac. 878, majority holding void act of 1893, relating to change of county seats.

Syl. 12 (I, 399). Vested rights not divestable.

Approved in Condon v. City of Eureka Springs, 135 Fed. 568, repeal of act of Arkansas 1875, authorizing cities to call in outstanding warrants and reissue them, was effective with respect to outstanding warrants; Wasserman v. Metzger, 105 Va. 765, 54 S. E. 899, determining whether purchaser was bona fide purchaser entitled to priority.

Syl. 14 (I, 407). Legislature prescribes laws.

Approved in Minnesota Canal etc. Co. v. Koochiching Co., 97 Minn. 437, 107 N. W. 408, property devoted to generation of water power for distribution and sale to general public is devoted to public use.

Syl. 18 (I, 410). Impairment of state's contracts.

Approved in Shepherd's Point Land Co. v. Hotel, 134 N. C. 398, 46 S. E. 749, applying rule to grant by state to persons as owners and riparian proprietors of lot in harbor in navigable arm of sea in front of their lands.

Syl. 21 (I, 415). Ex post facto law defined.

Approved in State v. Rooney, 12 N. D. 151, 95 N. W. 515, act of 1903, substituting penitentiary for county jail as place of confinement pending execution and directing executions there, not ex post facto as to one convicted prior to its passage; Ex parte Larkin, 1 Okl. 58, 25 Pac. 747, 11 L. R. A. 418, act of territorial assembly continuing in force Neb. Cr. Code is not ex post facto as offenses already committed but not prosecuted.

Syl. 23 (I, 419). Effect of reservation of Indian lands.

Approved in Labadie v. United States, 6 Okl. 414, 51 Pac. 670, Indian sustaining tribal relations and cutting timber on Osage reservation for speculative purposes is subject to fine.

6 Cr. 148-170, 3 L. 181, MASSIE v. WATTS.

Syl. 1 (I, 420). Equity jurisdiction wherever person found.

Approved in Wilhite v. Skelton, 149 Fed. 72, upholding jurisdiction over suit for specific performance of contract to convey interest in mine situated out of jurisdiction and to recover share of profits; Western Un. Tel. Co. v. Pittsburg etc. Ry. Co., 137 Fed. 437, in suit in equity in federal courts for specific performance of telegraph right of way contracts, necessary parties being before court, it is immaterial that part of property affected was beyond court's terri-

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torial jurisdiction; White Star Mining Co. v. Hultberg, 220 Ill. 600, 77 N. E. 335, applying rule in suit to set aside award of arbitrators; State v. District Court of Pine Co., 94 Minn. 372, 102 N. W. 870, action to cancel contract for sale of land for fraud and for recovery of price paid before discovery of fraud is transitory; Silver Camp Mining Co. v. Dickert, 31 Mont. 493, 78 Pac. 968, action for specific performance of contract to convey realty is in personam; Wyman v. Herard, 9 Okl. 63, 59 Pac. 1017, upholding jurisdiction over counterclaim; Dickson v. Loehr, 126 Wis. 645, 106 N. W. 794, 4 L. R. A. (N. S.) 986, where vendee agreed to convey land in another state as security for installment of price, vendor in action to foreclose entitled to judgment that vendee pay amount due or convey land; O'Dell v. Boyden, 150 Fed. 736, arguendo.

Distinguished in Jones v. Byrne, 149 Fed. 470, federal court cannot decree foreclosure of lien on and order sale of land in another state.

Syl. 4 (I, 425). Agent taking patent in own name.

Approved in Copper River Min. Co. v. McClellan, 2 Alaska, 144, applying rule to location of mining claims; Thompson v. Burk, 2 Alaska, 252, where defendant located placer claim, but made no discovery, and thereafter plaintiff relocated and without notifying defendant of it, contracted with him to dig discovery shaft, in which he found gold, discovery inured to perfect defendants' location; Brandon v. West, 28 Nev. 507, 83 Pac. 328, where owner of land granted to complainant by executed oral sale all sand on land, legal title to land having passed to such owner's descendants by operation of law, it was incumbent on them to convey to complainant right purchased.

6 Cr. 171-176, 3 L. 180, UNITED STATES v. HALL.

(I, 425.) Miscellaneous. Cited in State v. Rooney, 12 N. D. 150, 95 N. W. 515, as to ex post facto laws.

6 Cr. 176-183, CAMPBELL v. GORDON.

Syl. 1 (I, 426). Naturalization—Presumptions from certificate.

Approved in Dolan v. United States, 133 Fed. 448, certified copy of record of court showing admission of alien to citizenship constitutes "certificate of citizenship" within meaning of Rev. St., §§ 5425, 5427, making it criminal to aid another in using false certificate for certain purposes; State v. Weber, 96 Minn. 428, 105 N. W. 492, record of court of common pleas of Meigs county, Ohio, constitutes judgment admitting to citizenship person therein named.

6 Cr. 192-202, 3 L. 195, KORN v. MUTUAL ASSURANCE SOCIETY.

(I, 428.) Miscellaneous. Cited in Huber v. Martin, 127 Wis. 432, 105 N. W. 1037, determining rights of members of mutual insurance company in net assets when it ceases to do business.

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6 Cr. 221-225, 3 L. 205, SLACUM v. POMERY.

Syl. 2 (I, 433). Defects in declaration raised on appeal.

Approved in Phoenix Assur. Co. v. Maryland etc. Co., 146 Fed. 502, where judgment, sought to be reviewed on error, had for sole support verdict which was outside issues but in direct conflict with complaint, court could not remit excess and affirm same; Nichols v. Commissioners of Weston County, 13 Wyo. 7, 76 Pac. 682, where final judgment is not supported by pleading or findings, it may be vacated on error, on record without bill of exceptions, though no exception taken.

6 Cr. 253-267, 3 L. 215, SHEEHY v. MANDEVILLE & JAMESON.

Syl. 1 (I, 438). Other's note as payment.

Approved in San Juan v. St. John's Gas Co., 195 U. S. 521, 49 L. 304, 25 Sup. Ct. 108, agreement that payment in United States currency should extinguish larger amount due under street lighting contract estimated in Porto Rican currency, is binding where there was dispute as to medium of payment.

6 Cr. 267, 268, 3 L. 220, SKILLERN v. MAY.

Syl. 1 (I, 443). Objection to jurisdiction after reversal.

Approved in Riverdale Cotton Mills v. Alabama etc. Mfg. Co., 198 U. S. 197, 49 L. 1016, 25 Sup. Ct. 629, federal court which has decreed foreclosure in suit in which diverse citizenship admitted, and property described as lying partly in state, may restrain attack on title of purchaser under decree by state suit brought by party to original suit on theory that federal court assumed jurisdiction by his untruthful admission of citizenship.

6 Cr. 307-324, 3 L. 232, DUROUSSEAU v. UNITED STATES.

Syl. 1 (I, 451). Scope of supreme court's jurisdiction.

Approved in Ex parte Moran, 144 Fed. 589, determining jurisdiction of circuit court of appeals to issue habeas corpus where one is imprisoned for capital crime on conviction by Oklahoma court; State v. Crenshaw, 138 Ala. 509, 35 So. 456, state cannot appeal from judgment in proceedings to determine right to register as elector; Jung v. Myer, 11 N. M. 388, 68 Pac. 936, Laws 1901, c. 82, authorizing appeals to supreme court from interlocutory orders affecting substantial rights is void.

Syl. 2 (I, 453). Statutes construed according to intention.

Approved in United States v. American Surety Co., 200 U. S. 203, 50 L. 440, 26 Sup. Ct. 168, labor and materials used in prosecution of public work, whether furnished under contract directly to contractor or to subcontractor, are within obligation of bond given pursuant to 28 Stat. 278, c. 280.

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6 Cr. 329-330, 3 L. 239, THE SCHOONER RACHEL v. UNITED STATES.

Syl. 1 (I, 455). Expiration of penal law.

Approved in Pensacola etc. R. R. Co. v. State, 45 Fla. 89, 110 Am. St. Rep. 69, 33 So. 986, applying principle where pending appeal statute prescribing penalty for violation of railroad rate regulations repealed; Ex parte Larkin, 1 Okl. 55, 25 Pac. 746, 11 L. R. A. 418, arguendo.

6 Cr. 332-338, 3 L. 240, SERE v. PITOT.

Syl. 1 (I, 456). Federal suit by assignee.

Approved in Kolze v. Hoadley, 200 U. S. 82, 50 L. 380, 26 Sup. Ct. 220, applying rule to suit to foreclose trust deed; Gorman Wright Co. v. Wright, 134 Fed. 365, 67 C. C. A. 345, pledgee of stock cannot, on ground of diverse citizenship between himself and corporation, sue latter in federal court for appointment of receiver, where pledgor is resident of state of which corporation is citizen; Utah-Nevada Co. v. De Lamar, 133 Fed. 120, 121, 66 C. C. A. 179, suit by assignee of oral contract to recover money due thereon cannot be maintained in federal court unless assignor could sue therein.

Syl. 2 (I, 458). Acquisition includes governmental power.

Approved in Dorr v. United States, 195 U. S. 140, 49 L. 129, 24 Sup. Ct. 808, right of trial by jury was not extended to Philippines.

VII CRANCH.

7 Cr. 32-34, 3 L. 259, UNITED STATES v. HUDSON.

Syl. 2 (I, 462). Federal courts' jurisdiction limited.

Approved in Kentucky v. Powers, 201 U. S. 24, 50 L. 644, 26 Sup. Ct. 387, circuit court has no jurisdiction on removal of criminal prosecution wherein equal civil rights secured by federal laws, but not authorized by state law, were denied accused in summoning and impaneling jury; Stevenson v. Fain, 195 U. S. 167, 49 L. 143, 25 Sup. Ct. 6, decision of circuit court of appeals is final in action in circuit court between diverse citizens claiming under grants from different states; United States v. Barrett, 135 Fed. 192, federal court has no jurisdiction over suit in name of United States on bond of contractor under 28 Stat. 278, unless requisite citizenship and amount in controversy shown; Taylor v. State, 49 Fla. 80, 38 So. 384, upholding power of court to appoint another member of bar to act as adviser of grand jury where state attorney refuses to discharge duties; Barclay v. United States, 11 Okl. 509, 69 Pac. 800, stealing of property

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in Indian Territory and bringing it into Oklahoma not being crime under federal law, it is crime against Oklahoma law.

7 Cr. 34-52, 3 L. 260, SHIRRAS v. CAIG & MITCHELL.

Syl. 1 (I, 465). Title of purchaser of equitable interest.

Approved in Davis v. Carlisle, 142 Fed. 108, where under chattel mortgage providing for future advances, but leaving it optional with mortgagee whether he shall make them, they are made after notice of subsequent mortgage, his lien for advances is subsequent to second mortgage; Johnson v. Georgia Loan etc. Co., 141 Fed. 597, one claiming as bona fide purchaser of land previously conveyed by grantor must allege and prove payment of purchase money independently of recitals in deed; Wasserman v. Metzger, 105 Va. 752, 54 S. E. 895, determining that purchaser only bought equity and was not bona fide purchaser for value.

Syl. 5 (I, 468). Mortgage to secure future advances.

Approved in Holley v. Curry, 58 W. Va. 75, 112 Am. St. Rep. 948. 51 S. E. 137, holding description of debt secured insufficient to constitute new promise removing bar of limitations.

7 Cr. 52-68, 3 L. 266, SCHOONER PAULINA'S CARGO v. UNITED STATES.

Syl. 2 (I, 470). Statutory construction—Legislative intent.

Approved in dissenting opinion in Irwin v. Irwin, 2 Okl. 218, 37 Pac. 560, majority holding repeal of law giving probate courts jurisdiction in divorce, such courts have no jurisdiction in such cases.

7 Cr. 69-99, 3 L. 271, RUSSELL v. CLARKE.

Syl. 2 (I, 471). Remedy for fraud at law.

Approved in American Alkali Co. v. Salom, 131 Fed. 50, 65 C. C. A. 284, subscriber to corporate stock may plead rescission of sale for fraud as defense to action at law to recover assessments on subscription contract.

Syl. 3 (I, 472). Discovery—Equitable relief.

Approved in Larkey v. Gardner, 105 Va. 720, 54 S. E. 887, holding bill for discovery and relief on two bonds executed by defendant to plaintiff and still owned by latter, but in possession of former, insufficient as not averring discovery indispensable to recovery.

Syl. 4 (I, 473). Equity—Claim satisfiable out of fund.

Approved in Brockett v. Lewis, 144 Mich. 562, 108 N. W. 429, upholding equity jurisdiction of suit for accounting and application of amount due where corporation transferred property to assignee on his promise to corporation and creditors to run business and pay debts from proceeds.

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Syl. 5 (I, 475). Doubts construed against guaranty.

Approved in Kenneweg Co. v. Finney, 98 Md. 117, 56 Atl. 484, broker's reply to inquiries as to seller's responsibility that contract is good and that he will look out for buyer's interests is not guaranty that contract will be carried out.

Syl. 15 (I, 480). Essential parties necessary for decree.

Approved in Lynch v. United States, 13 Okl. 158, 73 Pac. 1100, applying rule in suit to cancel townsite patent.

(I, 471.) Miscellaneous. Cited in Fowler v. Osgood, 141 Fed. 24, and Indian Land & T. Co. v. Shoenfelt, 135 Fed. 487, 68 C. C. A. 196, both holding where equity has no jurisdiction, decree of dismissal must expressly adjudge that it is rendered on that ground or be made without prejudice.

7 Cr. 99, 3 L. 281, BINGHAM v. MORRIS.

Syl. 1 (I, 482). Dismissal for not filing transcript on appeal.

Approved in Equitable Life Assur. Soc. v. Tolbert, 145 Fed. 339, applying rule where record on error, though lodged with clerk in due time, was not filed till five days after return day owing to delay in payment of docket fee; Gilman v. Fernald, 141 Fed. 940, where transcript is filed in court of appeals within sixty days from signing of citation and within time specified, but after return day of writ of error, and failure to file before return day has not continued hearing over any term, and no motion to dismiss made till transcript printed, writ not dismissed.

7 Cr. 115, 116, 3 L. 287, UNITED STATES v. CROSBY.

Syl. 1 (I, 486). Law governing land titles.

Approved in Southern Pac. Co. v. Western Pac. Ry. Co., 144 Fed. 179, applying rule to question as to whether grant by Oakland of its waterfront had been confirmed by authority of law; Kane v. Luckman, 131 Fed. 617, applying rule in specific performance of oral contract for purchase of cows in exchange for farm; Succession of Hasling, 114 La. 296, 38 So. 174, validity of will made in Louisiana by citizen thereof devising land in Mississippi is tested by law of latter.

7 Cr. 116-147, 3 L. 287, SCHOONER EXCHANGE v. McFADDON.

Syl. 2 (I, 488). Foreign jurisdiction over warships.

Approved in United States v. Cornell Steamboat Co., 202 U. S. 190, 50 L. 990, 26 Sup. Ct. 648, federal government is liable for salvage upon the duties collected by it on cargo afterward saved from loss by fire while on board lighter in harbor and in control of customs officers.

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Syl. 1 (I, 489). Jurisdiction over passing foreign troops.

Approved in Hamilton v. McClaughry, 136 Fed. 448, 449, upholding jurisdiction of court-martial during "Boxer Uprising."

7 Cr. 147-152, 3 L. 297, FREELAND v. HERON.

Syl. 1 (I, 489). Stated account—Effect of silence.

Approved in Patillo v. Allen-West Com. Co., 131 Fed. 688, 65 C. C. A. 508, where complaint stated facts from which presumption of promise to pay balance of account stated arose, amendment adding averment of promise to pay balance of stated account presented no new cause of action.

7 Cr. 164-167, 3 L. 303, STATE OF NEW JERSEY v. WILSON.

Syl. 2 (I, 494). Repeal of state tax exemption.

Distinguished in Lake Drummond Canal Co. v. Commonwealth, 103 Va. 340, 344, 49 S. E. 507, 508, corporation purchasing property and franchise of another corporation on foreclosure of trust deed cannot claim tax immunity granted to original corporation.

7 Cr. 171-176, 3 L. 305, DAVY v. FAW.

Syl. 3 (I, 501). Necessity for award by deed.

See 102 Am. St. Rep. 247, note.

7 Cr. 176-194, 3 L. 307, HUGHES v. MOORE.

Syl. 4 (I, 501). Statute of frauds—Sale of equitable title.

Approved in Pickens v. Wood, 57 W. Va. 483, 50 S. E. 819, where husband buys land in own name, in suit to subject land to his debts, his uncorroborated evidence is insufficient to show express trust in favor of wife by parol agreement.

7 Cr. 206-208, 3 L. 317, RIDDLE v. MOSS.

Syl. 1 (I, 504). Principal obligor not competent witness.

Approved in Oexner v. Loehr, 117 Mo. App. 710, 93 S. W. 336, where one of makers of note was originally codefendant, but defaulted, his wife cannot testify for accommodation indorser defendant.

7 Cr. 218-241, 3 L. 321, CONWAY v. ALEXANDER.

Syl. 2 (I, 506). Doubtful conditional sales decided as mortgage.

Approved in Day v. Davis, 101 Md. 269, 61 Atl. 580, holding deed was accompanied by grantee's option to reconvey on payment of consideration and grantor could redeem; Liskey v. Snyder, 56 W. Va. 636, 49 S. E. 526, setting aside release of equity of redemption given for new consideration; Hursey v. Hursey, 56 W. Va. 160, 49 S. E. 371, deed absolute coupled with retention of possession and payment of taxes by grantor is mortgage.

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Syl. 8 (I, 510). Deed is mortgage where consideration inadequate.

Approved in Hursey v. Hursey, 56 W. Va. 157, 49 S. E. 370, deed absolute, coupled with retention of possession and payment of taxes by grantor, is mortgage.

Syl. 4 (I, 508). Mortgages—Remedy against person.

Approved in Reed v. Parker, 33 Wash. 117, 74 Pac. 64, construing transaction as sale with option to repurchase and not mortgage.

7 Cr. 288-290, 3 L. 347, BARTON v. PETIT.

Syl. 2 (I, 519). Certiorari in aid of writ of error.

Cited in Whitney v. Dick, 202 U. S. 139, 50 L. 966, 26 Sup. Ct. 584, certiorari in original proceeding to review conviction in inferior federal court is not authorized to be issued by circuit court of appeals.

7 Cr. 332-338, 3 L. 362, MARINE INS. CO. OF ALEXANDRIA v. HODGSON.

Syl. 1 (I, 530). Equitable relief against judgment.

Approved in Farmers' etc. W. H. Co. v. Pridemore, 55 W. Va. 463, 47 S. E. 263, reaffirming rule; Miller v. Margerie, 149 Fed. 698, denying equity jurisdiction to set aside townsite deed for fraud where facts and circumstances preventing complainants from having notice of hearing and opportunity to protect rights before trustee not alleged; Williams v. Neely, 134 Fed. 14, 69 L. R. A. 232, 67 C. C. A. 171, it is not laches for one who has equitable defense of reduction to note which is subject of pending litigation in another court to wait till affirmative action at law on defense is barred, before invoking equitable aid to enjoin prosecution of action; Nelson v. Meehan, 2 Alaska, 493, setting aside judgment for fraud and perjury in procurement, after term at which entered and after its affirmance by appellate court; Schwaman v. Traux, 179 N. Y. 44, 103 Am. St. Rep. 832, 71 N. E. 467, setting aside judgment and sale in partition, where plaintiff had by fraud been deprived of power to bid at sale and defendant bid in property at less than value; Hockaday v. Jones, 8 Okl. 163, 56 Pac. 1056, denying jurisdiction to enjoin execution of and annul default judgment obtained without service; McMahen v. Whelan, 44 Or. 406, 75 Pac. 716, judgment for plaintiff in justice court in unlawful detainer, nor its affirmance on appeal, does not estop defendant suing for specific performance of verbal lease and to enjoin judgment; Hearn v. Canning, 27 R. I. 220, 61 Atl. 604, denying injunction against execution on ground that judgment by confession was entered by mistake, where it would not have been entered but for negligence of attorney.

7 Cr. 339-348, 3 L. 364, LOCKE v. UNITED STATES.

Syl. 2 (I, 537). Probable cause to justify seizure.

Approved in United States v. 83 Sacks of Wool, 147 Fed. 749, on judgment for claimant of property seized by customs officers because

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of fraudulent importation, certificate of reasonable cause should be entered, though verdict was correct, where it is shown officers acted in good faith; Agnew v. Haymes, 141 Fed. 636, in action against internal revenue officer for wrongful seizure of property returned to claimant intact, proof that defendant made seizure by direction of revenue commissioner upon information received from agents showing suspicion of violation of law shows probable cause.

7 Cr. 358-363, 3 L. 370, CAZE v. BALTIMORE INS. CO.

Syl. 2 (I, 540). Freight where vessel abandoned.

Approved in The Eliza Lines, 199 U. S. 128, 50 L. 149, 26 Sup. Ct. 8, justifiable abandonment of vessel in consequence of dangers of seas entitles cargo owners to refuse to go on with voyage where master has not rejoined ship before anyone else has taken possession.

7 Cr. 366-370, 3 L. 373, LEE v. MUNROE.

Syl. 2 (I, 541). Government's liability for officers' torts.

Approved in United States v. Kauhoe, 147 Fed. 187, where defendants, who were liable on postmaster's bond for embezzlement, requested inspector to extend time, and he consented in consideration of their executing note, note was unauthorized and void; Hudson v. Miles, 185 Mass. 585, 71 N. E. 65, in action on tax collector's bond, if it is known to obligee of bond that principal in past had been guilty of irregularities in duties, obligee's failure to disclose fact is defense against surety's liability.

7 Cr. 370-382, 3 L. 374, HERBERT v. WREN.

Syl. 1 (I, 543). Dower—Law and equity jurisdiction.

Approved in Beeman v. Ketzman, 124 Iowa, 94, 99 N. W. 174, it is immaterial that widow styles action as one in partition if petition states facts on which dower may be assigned.

Syl. 2 (I, 543). Election between devise and dower.

Approved in Stone v. Cook, 179 Mo. 541, 78 S. W. 802, 64 L. R. A. 287, legatee accepting legacy under protest that will invalid cannot contest will by allegation of readiness to pay amount into court or to have it deducted from share if will set aside.

Syl. 3 (I, 544). Dower—Wife's right on lease.

Approved in Swayne v. Lone Acre Oil Co., 98 Tex. 608, 86 S. W. 743, 69 L. R. A. 986, where grantees of remainderman occupying in severalty by virtue of fee title of grantors to two-thirds, but to entire exclusion of life tenant, discovered oil, life tenant only entitled to interest on one-third of proceeds of sale of oil.

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7 Cr. 382-389, 3 L. 378, CARGO OF BRIGG AURORA v. UNITED STATES.

Syl. 1 (I, 545). Legislative conditions for operation of statute.

Approved in State v. Rogers, 97 Minn. 325, 106 N. W. 346, upholding Laws 1903, c. 333, p. 577, regulating collection and disposition of fees of district court clerks in counties of over 200,000 inhabitants; State v. Bryan, 50 Fla. 371, 39 So. 954, arguendo.

7 Cr. 408-415, 3 L. 386, FERGUSON v. HARWOOD.

Syl. 1 (I, 548). Conclusiveness of authentication of record.

Approved in Seymour v. Du Bois, 145 Fed. 1007, upholding sufficiency of authentication of record of judgment within provisions of Rev. St., § 905.

7 Cr. 420-423, 3 L. 391, STARK v. CHESAPEAKE INS. CO.

Syl. 1 (I, 552). Requisites of record of naturalization.

Approved in Dolan v. United States, 133 Fed. 449, certified copy of record of court showing admission of alien to citizenship constitutes "certificate of citizenship" within Rev. St., §§ 5425, 5427; Tinn v. United States Dist. Atty., 148 Cal. 775, 84 Pac. 152, order vacating order admitting alien to citizenship for fraud in its procurement, made after lapse of six months from naturalization is void.

7 Cr. 434, 435, 3 L. 396, SMITH v. DELAWARE INS. CO.

Syl. 1 (I, 555). Judgment on verdict when reserved.

Approved in Barge v. Haslam, 65 Neb. 659, 91 N. W. 529, following rule.

7 Cr. 436-455, 3 L. 396, HOLKER v. PARKER.

Syl. 2 (I, 555). Attorney's right to compromise.

Approved in Miocene Ditch Co. v. Moore, 150 Fed. 500, upholding order striking from files amendment to complaint in suit to determine water rights made pursuant to compromise by attorney for defendant, without defendant's knowledge, whereby defendant's rights in other streams adjudicated; Fleishman v. Meyer, 46 Or. 275, 80 Pac. 213, attorney at law, in absence of express authority, cannot compromise claim for client.

7 Cr. 471-480, 3 L. 408, BLACKWELL v. PATTON.

Syl. 3 (I, 559). Amendment of ejectment declaration.

Approved in King v. Davis, 137 Fed. 211, under Code Va. 1887, § 3253, where in ejectment original declaration contained description of land and allegation that defendants were unlawfully withholding possession from plaintiff, he could amend description before defendants' appearance.

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7 Cr. 481-487, 3 L. 411, MILLS v. DURYEE.

Syl. 1 (I, 559). Effect of sister state judgment.

Approved in Alaska Commercial Co. v. Debney, 2 Alaska, 314, where plaintiff asked leave to amend complaint on two causes of action, first on original debt and second on Canadian judgment against defendant on original debt, leave denied; dissenting opinion in Haddock v. Haddock, 201 U. S. 626, 632, 50 L. 893, 896, 26 Sup. Ct. 525, majority holding mere domicile within state of one party to marriage does not give courts of that state jurisdiction to render divorce decree enforceable in other states against defendant constructively served; dissenting opinion in Smith v. Willung, 123 Wis. 386, 101 N. W. 695, arguendo. See 103 Am. St. Rep. 305, 307, note.

Syl. 2 (I, 567). Nihil debet as plea to foreign judgment.

See 103 Am. St. Rep. 323, note.

7 Cr. 496-500, 4 L. 417, BRIG CAROLINE v. UNITED STATES.

Syl. 2 (I, 570). Amendment of libel for forfeiture.

Approved in Graham v. Oregon R. etc. Co., 134 Fed. 693, where exceptions to libel in admiralty for want of jurisdiction are sustained. amendment may be allowed.

7 Cr. 504-506, 3 L. 420, McINTIRE v. WOOD.

Syl. 1 (I, 571). Mandamus by circuit court.

Approved in Barber Asphalt etc. Co. v. Morris, 132 Fed. 955, 67 L. R. A. 761, 66 C. C. A. 55, upholding jurisdiction of court of appeals to issue mandamus to compel circuit court to vacate order staying proceedings in state court; dissenting opinion in Tampa Waterworks Co. v. Tampa, 199 U. S. 247, 50 L. 175, 26 Sup. Ct. 23, majority upholding power of municipality of Florida to reduce water rates.

Distinguished in McDaid v. Territory, 1 Okl. 97, 30 Pac. 440, territorial court may issue mandamus to compel townsite trustees to issue deed to contestant they have decided is entitled to it.

Syl. 2 (I, 573). Circuit court's jurisdiction limited.

Approved in Kentucky v. Powers, 201 U. S. 24, 50 L. 644, 26 Sup. Ct. 387, denial, in summoning or impaneling jurors, of any civil right secured by federal law, does not, unless authorized by state laws, give right to remove criminal prosecution to federal court; Stevenson v. Fain, 195 U. S. 167, 49 L. 143, 25 Sup. Ct. 6, circuit court of appeals has no jurisdiction over controversy between claimants under grants from different states where diverse citizenship did not exist.

7 Cr. 550-565, 3 L. 436, PALMER v. ALLEN.

Syl. 2 (I, 576). Effect of state law on federal officers.

Approved in King v. Davis, 137 Fed. 241, Va. Code 1887, § 3566, relating to lis pendens, has no application to federal courts.

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7 Cr. 565-570, 3 L. 440, YOUNG v. BLACK.

Syl. 1 (I, 577). Assumpsit—Res adjudicata as defense.

Approved in Holford v. James, 136 Fed. 555, 69 C. C. A. 263, upholding sufficiency of docket entries to support plea of res adjudicata.

7 Cr. 570-572, 3 L. 442, SCHOONER ANNE v. UNITED STATES.

Syl. 2 (I, 581). Sufficiency of libel for forfeiture.

Approved in J. W. Bishop Co. v. Shelhorse, 141 Fed. 647, upholding action of trial judge in suggesting to plaintiff addition of another count to declaration setting forth more clearly matters covered by general averment.

Syl. 3 (I, 581). Amendment of libel in admiralty.

Approved in Graham v. Oregon R. etc. Co., 134 Fed. 693, where exceptions to libel in admiralty for want of jurisdiction are sustained amendment may be allowed.

7 Cr. 572-575, 3 L. 443, UNITED STATES v. JANUARY.

Syl. 3 (I, 582). Officers—Liability of second bondsmen.

Approved in First Nat. Bank v. National Surety Co., 130 Fed. 406, 407, 409, 66 L. R. A. 777, applying principle to indemnity bond of bank official.

7 Cr. 577-589, 3 L. 444, LIVINGSTON v. DOEGENOIS.

Syl. 2 (I, 584). Mandamus by supreme court.

Approved in Barber Asphalt etc. Co. v. Morris, 132 Fed. 954, 956, 67 L. R. A. 761, 66 C. C. A. 55, circuit court of appeals has jurisdiction to issue mandamus to compel circuit judge to vacate order staying proceedings in state court; In re Dowd, 133 Fed. 751, argu-endo.

7 Cr. 596-601, 3 L. 451, THORNTON v. CARSON.

Syl. 1 (I, 585). Award in alternative.

Approved in Brock v. Lawton, 210 Pa. 202, 59 Atl. 999, applying rule where bill filed to compel delivery of stock or payment of its value.

Syl. 3 (I, 585). Setting aside award.

Approved in Burrill v. United States, 147 Fed. 49, where, in action in federal court, parties agreed to trial before arbitrators, court may enter judgment on award.

7 Cr. 603-632, 3 L. 453, FAIRFAX v. HUNTER.

Syl. 3 (I, 586). Alien's right to hold land.

Approved in Pembroke v. Huston, 180 Mo. 638, 79 S. W. 471, alien cannot abandon property and rescind contract for exchange of lands;

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Louisville Property Co. v. Mayor & City Council of Nashville, 114 Tenn. 221, 84 S. W. 812, purchase of land by foreign corporation without first complying with laws relating to foreign corporations is no bar to suit for damage to land from change of street grade.

Syl. 6 (I, 588). Forfeiture of alien's lands.

Approved in Brigham v. Peter Bent Brigham Hospital, 134 Fed. 527, 67 C. C. A. 393, where testator devised residuary estate in trust for term and then to be transferred to corporation to be organized, to be used for hospital, fact that at testator's death charitable corporation could not hold property to amount of devise did not invalidate gift as to excess where special act passed permitting corporation to take; Shea v. Nilima, 133 Fed. 215, 66 C. C. A. 263, upholding agreement between two aliens to locate mining claims.

VIII CRANCH.

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8 Cr. 9-30, 3 L. 471, GRIFFITH v. FRAZIER.

Syl. 2 (I, 592). Executors—Effect of want of jurisdiction.

Approved in Cunnius v. Reading School Dist., 198 U. S. 473, 49 L. 1131, 25 Sup. Ct. 721, upholding Pa. Laws 1885, p. 155, for administration of estates of absentees; Savings Bank of Baltimore v. Weeks, 103 Md. 606, 64 Atl. 296, holding void act of 1896, giving orphans' court jurisdiction to appoint administrator for estate of person unheard of for seven years; Jordan v. Chicago etc. Ry. Co., 125 Wis. 588, 592, 110 Am. St. Rep. 865, 104 N. W. 805, 807, 1 L. R. A. (N. S.) 885, under Rev. St. 1898, § 3819, county court on hearing petition for administration may determine whether or not deceased leaves property in state, and its determination is not collaterally attackable; Rice v. Tilton, 14 Wyo. 113, 82 Pac. 579, administrator appointed under voidable order reciting proof of notice made, but where in fact statutory notice to executor named in will not mailed, is entitled to commissions and disbursements.

Syl. 4 (I, 593). Executor absent from state.

See 108 Am. St. Rep. 414, note.

(I, 590.) Miscellaneous. Cited in Leahy v. Haworth, 141 Fed. 852, arguendo.

8 Cr. 39-50, 3 L. 481, MARCARDIN v. CHESAPEAKE INS. CO.

Syl. 1 (I, 594). Charter for cargo as affreightment.

Approved in Grimberg v. Columbia Packers' Assn., 47 Or. 264, 266, 83 Pac. 197, construing charter of vessel as contract of affreightment and not demise.

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8 Cr. 72-74, 3 L. 491, CLEMENTSON v. WILLIAMS.

Syl. 1 (I, 598). Limitations—Acknowledgment of debt.

See 102 Am. St. Rep. 753, note.

8 Cr. 84-93, 3 L. 496, RICHARDS v. MARYLAND INS. CO.

Syl. 1 (I, 601). Limitations—Failure of executor to prosecute suit.

Distinguished in Patterson v. Safe Deposit & Trust Co., 148 Fed. 790, arguendo.

8 Cr. 98-108, 3 L. 500, BEATTY v. BURNS.

Syl. 2 (I, 602). Statute of limitations one of repose.

Approved in Lynchburg etc. Mill Co. v. Travelers' Ins. Co., 140 Fed. 724, when insurance policy provides that action thereon is barred unless commenced within thirty days after right of action accrues, conduct of company inducing delay merely suspends operation of clause.

8 Cr. 229-251, 3 L. 545, GREEN v. LITER.

Syl. 4 (I, 611). Jurisdiction—Amount in controversy.

Approved in Way v. Clay, 140 Fed. 355, in ejectment in federal court to recover land alleged to be valued at over $2,000, jurisdiction not ousted by disclaimer of all except tract of less value.

Syl. 5 (I, 612). Costs—Recovery less than jurisdictional amount.

Overruled in McCarthy v. American Thread Co., 143 Fed. 680, circuit court cannot compel payment of costs by plaintiff recovering less than $500, unless damages laid in declaration in excess of $2,000 merely to give colorable jurisdiction.

8 Cr. 398-416, 3 L. 602, UNITED STATES v. 1960 BAGS OF COFFEE.

Syl. 1 (I, 618). Effect of forfeiture under nonintercourse acts.

Approved in McConathy v. Deck, 34 Colo. 471, 83 Pac. 138, under statute providing for forfeiture of concealed weapons taken from parties violating statute, conviction of carrying concealed weapon not necessary to forfeiture; Daniels v. Homer, 139 N. C. 232, 51 S. E. 997, 3 L. R. A. (N. S.) 997, upholding Acts Gen. Assem. 1905, c. 292, § 9, relating to seizure and sale of appliances used in illegal fishing.

8 Cr. 462-470, 3 L. 624, ALEXANDER v. PENDLETON.

Syl. 3 (I, 624). Bona fide purchaser without notice of trust.

Approved in Slaughter v. Coke County, 34 Tex. Civ. 602, 79 S. W. 865, conveyance reciting grantor has sold all right, title and interest in certain land transferred to grantor by order of court and contract for deed gives only grantor's title.

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Syl. 4 (I, 624). Abatement takes no time out of limitations.

Approved in Patterson v. Safe Deposit & Tr. Co., 148 Fed. 791, denying equitable relief where seven years after commencement of action without trial defendant died in another state, and two years thereafter new action barred by limitation commenced against administrator in other state.

8 Cr. 471-478, 3 L. 627, PRATT v. CARROLL.

Syl. 1 (I, 625). Specific performance refused for laches.

Approved in Marks v. Gates, 2 Alaska, 526, refusing specific performance of grubstake contract.

IX CRANCH.

9 Cr. 11-18, 3 L. 639, MEIGS v. McCLUNG'S LESSEE.

Syl. 1 (I, 626). Indian treaty—Contract not controllable by agent.

Approved in Wadsworth v. Boysen, 148 Fed. 780, enjoining Indian agent obstructing complainant from prospecting on reservation.

9 Cr. 43-55, 3 L. 650, TERRETT v. TAYLOR.

(I, 631.) Miscellaneous. Cited in Ex parte Anderson, 46 Tex. Cr. 392, 81 S. W. 983, city court has no jurisdiction to try accused for alleged violation of state penal statute.

9 Cr. 71-76, 3 L. 660, BRIG STRUGGLE v. UNITED STATES.

Syl. 1 (I, 639). Weight of circumstanial evidence.

See 97 Am. St. Rep. 774, note.

9 Cr. 76-86, 3 L. 662, RANDOLPH v. DONALDSON.

Syl. 1 (I, 639). Marshal—Escape from state jail.

Approved in Avery v. Pima County, 7 Ariz. 33, 60 Pac. 704, sheriff not entitled to extra pay for care of federal prisoners.

9 Cr. 87-102, 3 L. 665, POLK'S LESSEE v. WENDAL.

Syl. 1 (I, 639). Following state statutory construction.

Approved in Lockard v. Asher Lumber Co., 131 Fed. 690, 65 C. C. A. 517, under St. Ky., c. 102, § 3, survey of several tracts of two hundred acres each by same person is not purchase, and patent for lands so surveyed is not void on face.

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Syl. 3 (I, 641). Presumptions from patent.

Approved in Lockard v. Asher Lumber Co., 131 Fed. 691, 695, 65 C. C. A. 517, under Rev. St. Ky., c. 102, § 3, where same person obtained survey of several tracts of two hundred acres each, patent for lands so surveyed is not void on face.

Syl. 5 (I, 642). Patent where state's title void.

Approved in Reeve v. North Carolina Land etc. Co., 141 Fed. 823, following rule; Davis v. Moyles, 76 Vt. 32, 56 Atl. 176, grant of land from state conveys only state's title.

Syl. 6 (I, 644). Equity—Conflicting claims under patent.

Approved in Reeve v. North Carolina Land etc. Co., 141 Fed. 825, following rule.

9 Cr. 104-120, 3 L. 671, ARNOLD v. UNITED STATES.

Syl. 2 (I, 647). Duties accrue on arrival.

Approved in United States v. Hartwell Lumber Co., 142 Fed. 436, where merchandise imported shortly before tariff act of 1897 went into effect and collector rejected tender of duty as being made before entry complete, and tender not renewed till act operative, act of 1897 governed; Ellison v. United States, 136 Fed. 972, imported merchandise entered at one port for immediate transportation to another cannot be entered for consumption at latter port before its arrival at that port.

9 Cr. 126-151, 3 L. 678, THE MARY.

Syl. 2 (I, 649). Notice necessary to binding judgment.

Approved in Reynolds v. Whittemore, 99 Me. 110, 58 Atl. 416, discharge in voluntary bankruptcy where debt not scheduled and creditor had no notice until after discharge obtained, does not bar debt.

9 Cr. 151-153, 3 L. 687, LEWIS v. McFARLAND.

Syl. 1 (I, 651). Executor's suit in foreign state.

Approved in Moore v. Petty, 135 Fed. 673, 68 C. C. A. 306, executor may sue in another state to recover from agent proceeds of sale of decedent's realty.

9 Cr. 173-179, 3 L. 694, McIVER'S LESSEE v. WALKER.

Syl. 2 (I, 656). Monuments control courses.

Distinguished in Security Land etc. Co. v. Burns, 193 U. S. 179, 48 L. 671, 24 Sup. Ct. 425, courses and distances set forth in plat of official survey and referred to in patent, which shows alleged meander line of lake as one boundary, control as against actual boundary of lake, where survey fraudulent and lake never within half mile of point indicated on plat.

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9 Cr. 244-289, 3 L. 719, THE ADELINE.

Syl. 1 (I, 661). Admiralty—Amendment of libel.

Approved in Graham v. Oregon etc. Nav. Co., 134 Fed. 693, where exceptions to libel in admiralty for want of jurisdiction are sustained, leave to amend may be granted.

9 Cr. 292-338, 3 L. 735, PAWLET v. CLARK.

Syl. 1 (I, 663). Courts—Conflicting grants by states.

Distinguished in Stevenson v. Fain, 195 U. S. 169, 49 L. 144, 25 Sup. Ct. 6, denying jurisdiction of circuit court over controversy between parties not having requisite diversity of citizenship but claiming under grants from different states.

I WHEATON.

1 Wheat. 9-19, 4 L. 23, THE SAMUEL.

Syl. 1 (I, 674). Depositions—Witness must be absent.

Approved in Boise v. Atchison etc. Ry. Co., 6 Okl. 247, 51 Pac. 663, fact that wife is in attendance upon sick husband does not make deposition admissible where not shown she was out of county.

1 Wheat. 75-84, 4 L. 40, THOMPSON v. GRAY.

Syl. 1 (I, 677). Title passes when article selected.

Approved in Buskirk Bros. v. Peck, 57 W. Va. 369, 50 S. E. 435, under contract for sale of timber to be cut and removed by vendor in specified time and paid for each month before removal, title vests as timber is cut.

1 Wheat. 91-95, 4 L. 44, NEW ORLEANS v. WINTER.

Syl. 1 (I, 677). Suit between citizens of territory and state.

Approved in Alabama etc. Ry. Co. v. Thompson, 200 U. S. 219, 50 L. 448, 26 Sup. Ct. 161, where plaintiff, in good faith, elects to sue jointly, in tort, foreign corporation and servants, presents separable controversy, which may be removed to federal court.

Syl. 2 (I, 678). Jurisdictional capacity of all parties.

Approved in Sweeney v. Carter Oil Co., 199 U. S. 257, 50 L. 180, 26 Sup. Ct. 55, two citizens of different states may sue citizen of their state in circuit court of latter's district; Laden v. Meck, 130 Fed. 879, 65 C. C. A. 361, allegation in removal petition that certain of petitioners are "residents" of state other than that of which plaintiff is citizen, and that none of petitioners are "residents and citizens" of state of plaintiff's citizenship, is insufficient.

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(I, 677.) Miscellaneous. Cited in Robinson v. Peru Plow etc. Co., 1 Okl. 149, 31 Pac. 991.

1 Wheat. 96-111, 4 L. 45, THE AURORA.

Syl. 1 (I, 679). Shipping—Advances.

Approved in The Wyandotte, 136 Fed. 473, where purchaser of draft drawn by master of vessel in foreign port for advances to pay proper charges had no knowledge that at time draft drawn master held drafts for freight which he could have used to pay such charges, fact that charter-party provided ordinary disbursements should be payable from freight only was no defense to draft.

1 Wheat. 179-207, 4 L. 65, HEPBURN v. DUNLOP.

Syl. 1 (I, 684). Specific performance—Title before decree.

Approved in Kentucky Distilleries etc. Co. v. Blanton, 149 Fed. 41, and Gibson v. Brown, 214 Ill. 336, 73 N. E. 580, both following rule; Hosmer v. Wyoming Ry. etc. Co., 129 Fed. 892, 65 L. R. A. 81, where contract evidences actual sale and purchase of realty, and time is not of essence, bill for specific performance not dismissed for failure to tender payment.

Syl. 4 (I, 686). Dismissal as bar to second suit.

Approved in Lockhart v. Leeds, 12 N. M. 164, 76 Pac. 314, judgment against plaintiff on bill to have mine location declared void for fraud and violation of agreement to locate for plaintiff bars suit to declare defendant holds mine in trust.

1 Wheat. 261-278, 4 L. 86, THE EDWARD.

Syl. 1 (I, 691). Admiralty—Amendment of libel on appeal.

Approved in Graham v. Oregon etc. Nav. Co., 134 Fed. 693, following rule.

1 Wheat. 304-382, 4 L. 97, MARTIN v. HUNTER.

Syl. 1 (I, 694). United States' powers limited.

Approved in Burton v. United States, 202 U. S. 366, 50 L. 1065, 26 Sup. Ct. 688, upholding Rev. St., § 1782, making it misdemeanor for senator to receive or agree to receive compensation for services rendered before any department in relation to proceedings in which United States is interested; Southern Ry. Co. v. Greensboro Ice & Coal Co., 134 Fed. 92, order of state corporation commission to place carloads of coal shipped from one state to another on certain track for unloading, as requested by consignee, is void.

Syl. 7 (I, 696). Exclusiveness of federal jurisdiction.

Approved in Jackman v. Eau Claire Nat. Bank, 125 Wis. 481, 104 N. W. 103, upholding jurisdiction of state courts over action by bankruptcy trustee to recover value of property as preference.

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Syl. 11 (I, 699). Statutes—Contemporaneous construction.

Approved in State v. New Orleans Ry. & L. Co., 116 La. 148, 40 So. 598, applying rule where under two similar constitutions exempting manufacturers from license taxes, legislature for twenty years imposed license taxes on electric companies; State v. Northern Pac. Ry. Co., 95 Minn. 47, 103 N. W. 732, foreign railroad paying taxes under gross earnings law is not prevented by failure to list credits from deducting debts from such credits; Henry v. State, 87 Miss. 57, 39 So. 871, upholding Rev. Code 1892, § 3201, providing for working convicts on farm leased for that purpose; Ex parte Anderson, 46 Tex. Cr. 399, 81 S. W. 987, city court has no jurisdiction to try accused for alleged violation of state penal statute.

1 Wheat. 440-447, 4 L. 131, THE HIRAM.

Syl. 1 (I, 707). Setting aside agreement made by mistake.

Approved in Carrell v. McMurray, 136 Fed. 670, applying rule to reformation of deed made under contract for exchange of farm for stock of merchandise.

1 Wheat. 447-462, 4 L. 132, AMMIDON v. SMITH.

Syl. 1 (I, 707). Surety—Discharge of prisoner by fraud.

Approved in dissenting opinion in Haddock v. Haddock, 201 U. S. 627, 50 L. 893, 26 Sup. Ct. 525, majority holding mere domicile within state of one party to marriage does not give courts of that state jurisdiction to render decree of divorce enforceable in other states against nonresident only constructively served.

1 Wheat. 482-487, 4 L. 141, ROSS v. REED.

Syl. 1 (I, 709). Public officer's acts presumed correct.

Approved in Griffin v. American Gold Min. Co., 136 Fed. 73, 68 C. C. A. 637, applying principle to marshal's return on attachment of realty.

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II WHEATON.

2 Wheat. 25-31, 4 L. 175, McIVER v. RAGAN.

Syl. 1 (I, 714). Purpose of statute of limitations.

Approved in dissenting opinion in Ayres v. Cone, 138 Fed. 786, majority holding where validity of claim of petitioning creditor in involuntary bankruptcy proceedings is put in issue by bankrupt's answer and issue determined in favor of creditor, adjudication is conclusive.

Distinguished in French v. White, 78 Vt. 96, 62 Atl. 36, 2 L. R. A. (N. S.) 804, property vesting in bankrupt's trustee under bankruptcy law is not attachable in state court.

Syl. 2 (I, 715). Court makes no exceptions to limitation statute.

Approved in Atchison etc. Ry. Co. v. Grain Co., 68 Kan. 588, 75 Pac. 1052, following rule.

(I, 714.) Miscellaneous. Cited in Fry v. Fry, 125 Iowa, 430, 101 N. W. 146, construing Code, § 3276, relating to revocation of wills by subsequent birth of legitimate child.

2 Wheat. 66-76, 4 L. 185, COOLIDGE v. PAYSON.

Syl. 1 (I, 721). Drafts—Pre-existing debt as consideration.

Approved in Barnsdall v. Waltemeyer, 142 Fed. 419, promise to accept bill not in existence but subsequently drawn in favor of promisee, who takes it for pre-existing debt, is good acceptance.

Syl. 2 (I, 721). Drafts—Letter promising to accept.

Approved in Bank of Havelock v. Western Union Tel. Co., 141 Fed. 525, applying rule to action by mortgagees against telegraph company for loss of lien caused by receipt of false telegram over telephone; Bank of Seneca v. First Nat. Bank, 105 Mo. App. 726, 78 S. W. 1093, where bank issues letter of credit obligating itself to pay bearer's checks to certain amount, checks drawn by bearer and cashed by bank which had no notice of letter cannot be applied in extinguishment of amount named in letter.

2 Wheat. 111-118, 4 L. 197, McCOUL v. LE KAMP.

(I, 723.) Miscellaneous. Cited in Brown v. Fletcher, 140 Fed. 642, where personal representative of deceased complainant in federal suit took no steps to review, but brought suit in another jurisdiction for some relief, defendant is entitled to dismissal for abandonment.

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2 Wheat. 119-122, 4 L. 199, UNITED STATES v. SHELDON.

Syl. 1 (I, 723). Penal statutes strictly construed.

Approved in Dooley v. Jackson, 104 Mo. App. 32, 78 S. W. 334, statutes making election bets gaming and authorizing suit against stakeholder to recover money bet, do not apply to primary elections.

2 Wheat. 148-160, 4 L. 206, THE WILLIAM KING.

Syl. 1 (I, 726). Acts in fraud of law.

Approved in Curley v. United States, 130 Fed. 11, 64 C. C. A. 369, one who falsely impersonates another at civil service examination is guilty of conspiracy to defraud within Rev. St., § 5440.

2 Wheat. 196-206, 4 L. 218, RUTHERFORD v. GREENE.

Syl. 1 (I, 728). Grant of land subsequently surveyed.

Distinguished in Conway v. United States, 149 Fed. 266, where Ponco squaw's allotment in Sioux reservation as well as other Indian's whom she married were approved and patent for lieu lands separately applied for was made to husband as head of family, she was entitled to half; Wallace v. Adams, 143 Fed. 722, claimants of Indian citizenship who secured judgments in their favor, which were final under statutes when rendered, and took possession of, and demanded lands as their allotments, before judgments were made reviewable, acquired no vested rights therein against subsequent legislation.

2 Wheat. 221-226, 4 L. 224, PATTERSON v. UNITED STATES.

Syl. 1 (I, 732). Variance from issues vitiates verdict.

Approved in Hamilton v. Murray, 29 Mont. 84, 74 Pac. 76, where in ejectment plaintiff's allegations as to ownership, possession and ouster denied and on trial controversy was as to location of boundary, verdict for plaintiff for possession is bad.

Syl. 3 (I, 734). Certiorari for removal of cause.

Approved in Whitney v. Dick, 202 U. S. 139, 50 L. 966, 26 Sup. Ct. 584, circuit court of appeals has no jurisdiction to issue certiorari to review conviction in inferior federal court.

2 Wheat. 227-248, 4 L. 226, THE PIZARRO.

Syl. 1 (I, 734). Condemnation—Spoliation of papers.

Approved in Yarborough v. Hughes, 139 N. C. 211, 51 S. E. 908, where in suit to set aside sale under power, evidence showed that attorney and purchaser were jointly interested, and defendant failed to produce writings relating to transaction, failure raised presumption against him.

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2 Wheat. 259-278, 4 L. 234, CHIRAC v. CHIRAC.

Syl. 3 (I, 737). Aliens' property rights under treaty.

Approved in Doe v. Roe, 4 Penne. (Del.) 400, 55 Atl. 341, applying rule to devolution of property under treaty of 1900 with Great Britain.

2 Wheat. 290-305, 4 L. 242, MORGAN v. MORGAN.

Syl. 1 (I, 738). Divestiture of federal jurisdiction.

Approved in Lebensberger v. Scofield, 139 Fed. 384, following rule; Kirby v. American Soda etc. Co., 194 U. S. 146, 48 L. 913, 24 Sup. Ct. 619, upholding circuit court's jurisdiction over cross-bill seeking to recover balance of $1,700, due on contract of exchange, where original bill dismissed on complainant's own motion asked for cancellation of agreement to pay $2,025, in consideration of exchange.

Syl. 2 (I, 740). Specific performance—Parties.

Approved in Brandon v. West, 28 Nev. 507, 83 Pac. 328, where owner of land granted to complainant by executed oral sale all sand on land, legal title to land having passed to such owner's descendants by operation of law, it was incumbent on them to convey to complainant right purchased.

Syl. 3 (I, 740). Specific performance—Ability to perform.

Approved in Day v. Mountin, 137 Fed. 765, 70 C. C. A. 190, where contract for sale of lands requires vendor to furnish abstract showing clear title, it cannot be specifically enforced by vendor where only title shown is government entry without final proofs.

2 Wheat. 327-335, 4 L. 252, THE ANNA MARIA.

Syl. 2 (I, 742). Damages—Anticipated profits.

Approved in Choctaw etc. R. R. Co. v. Jacobs, 15 Okl. 500, 82 Pac. 504, applying rule in action against railroad for delay in delivering freight; Tootle v. Kent, 12 Okl. 691, 73 Pac. 315, allowing probable loss of profits to merchant by attachment brought on by reason of fraudulent chattel mortgage; Chisholm etc. Mfg. Co. v. Y. S. Canopy Co., 111 Tenn. 210, 77 S. W. 1063, allowing lost profits as damages for breach of contract to manufacture of patent brackets.

2 Wheat. 336-345, 4 L. 253, COLSON v. THOMPSON.

Syl. 1 (I, 743). Specific performance of vague contract.

Approved in Sharp v. West, 150 Fed. 461, three years' unexplained delay in bringing suit for specific performance of contract for sale of land bars right; Jones v. Byrne, 149 Fed. 461, denying specific performance of contract for sale of land obtained by attorney by breach of trust; Hildreth v. Duff, 143 Fed. 140, applying rule to contract whereby one party was to work for another to perfect for him a candy-making machine; Couch v. McCoy, 138 Fed. 701, offer to give

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option to purchase realty, where written contract embodying terms of option is clearly contemplated by both parties, does not constitute binding contract until writing executed; Kane v. Luckman, 131 Fed. 612, applying rule to contract for exchange of lands for cows; Marks v. Gates, 2 Alaska, 527, refusing to specifically perform contract to convey all property which defendant may acquire in Alaska; Kirkpatrick v. Pettis, 127 Iowa, 612, 103 N. W. 957, where, in suit for specific performance of oral contract to convey land, neither receipt for earnest-money nor any evidence described land particularly, specific performance not decreed; Rosenwald v. Middlebrook, 188 Mo. 99, 86 S. W. 212, denying specific performance of parol contract to will plaintiff all of decedent's property in consideration of services rendered as decedent's partner in practice of medicine; Meyer Land Co. v. Pecor, 18 S. D. 469, 101 N. W. 40, instrument reciting that person named has paid $50 for tract of land described "for $9,000, $6,000 cash and balance at six per cent, 500 payment per year," signed by owner, is too incomplete.

2 Wheat. 377-379, 4 L. 266, COLSON v. LEWIS.

Syl. 1 (I, 750). Courts—Conflicting state grants.

Distinguished in Stevenson v. Fain, 195 U. S. 169, 49 L. 144, 25 Sup. Ct. 6, decision of circuit court of appeals is final in controversy between citizens of different states claiming under grants from different states depending entirely upon diverse citizenship.

2 Wheat. 380-384, 4 L. 266, LEEDS v. MARINE INS. CO. OF ALEXANDRIA.

Syl. 1 (I, 750). Equity—Answer as evidence.

Approved in Johnson v. Georgia Loan etc. Co., 141 Fed. 597, bona fide purchaser must allege and prove want of notice and actual payment of purchase price.

2 Wheat 385-389, 4 L. 268, RABORG v. PEYTON.

Syl. 2 (I, 752). Debt against payee of draft.

Approved in United States v. Alcorn, 145 Fed. 1000, in action on proposal bond of mail contractor, fact that government recovered from surety actual damages sustained by breach of contract is no defense; Ragsdale v. Gresham, 141 Ala. 314, 37 So. 369, acceptance of order, as between acceptor and payee, is not collateral promise to pay debt of another; Hudson v. McNear, 99 Me. 407, 59 Atl. 546, arguendo.

2 Wheat. 390-394, 4 L. 269, UNION BANK OF GEORGETOWN v. LAIRD.

Syl. 2 (I, 754). Corporation's lien on shares for debt.

Approved in Dempster Mfg. Co. v. Downs, 126 Iowa, 83, 106 Am. St. Rep. 340, 101 N. W. 736, lien in favor of corporation on stock

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of members on account of debts due corporation from them may be created by articles of incorporation; Herman Goepper & Co. v. Phoenix B. Co., 115 Ky. 716, 74 S. W. 728, where bonds were deposited as collateral for notes in which no provision was made requiring pro tanto release of collateral or partial payment, creditor could hold entire collateral as security for balance of debt.

2 Wheat. 395, 4 L. 271, UNITED STATES v. BARKER.

Syl. 2 (I, 755). United States not liable for costs.

Approved in State v. Williams, 101 Md. 534, 109 Am. St. Rep. 583, 61 Atl. 299, 1 L. R. A. (N. S.) 254, costs cannot be awarded against state.

III WHEATON.

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3 Wheat. 172-183, 4 L. 362, DUGAN v. UNITED STATES.

Syl. 1 (I, 762). Possession of note by indorsee.

Approved in New Haven Mfg. Co. v. New Haven etc. Co., 76 Conn. 132, 55 Atl. 606, mere possession of holder of negotiable note by indorsee is sufficient evidence of ownership to support suit thereon by him; Dunlap v. Kelly, 105 Mo. App. 4, 78 S. W. 665, where plaintiff in action on note alleges she was original payee thereof, but that it had been indorsed by her to third person and by latter back to her, indorsements themselves are insufficient to prove allegations.

3 Wheat. 204-212, 4 L. 371, PATTON v. NICHOLSON.

Syl. 1 (I, 768). Sale of license from enemy.

Approved in Sawyer v. Sanderson, 113 Mo. App. 245, 88 S. W. 154, inclusion of seller's license in sale of saloon renders note given therefor void under Rev. St. 1899, § 2992; Monahan v. Monahan, 77 Vt. 143, 59 Atl. 172, 70 L. R. A. 935, where complainant seeking to impress securities with trust, and issues omit fraud, he cannot be denied relief because of fraudulent purpose to avoid taxation by placing securities in defendant's name.

3 Wheat. 212-230, 4 L. 372, ROBINSON v. CAMPBELL.

Syl. 6 (I, 770). Equitable remedies in federal courts.

Approved in Carlson v. Sullivan, 146 Fed. 479, seventh amendment guarantees jury trial in judicial proceedings in territories; In re E. T. Kenney Co., 136 Fed. 454, where creditors of bankrupt before bankruptcy assigned claims to committee in trust to purchase bankrupt's property and sell same for benefit of assignors, latter could

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not prove equitable interest as against claims against bankrupt estate, though state statutes abolished distinction between legal and equitable proceedings.

3 Wheat. 234-236, 4 L. 378, HAMPTON v. McCONNEL.

Syl. 1 (I, 773). Judgments—Full faith and credit.

Approved in Succession of Caldwell, 114 La. 195, 108 Am. St. Rep. 347, 38 So. 142, applying rule to decree of adoption; dissenting opinion in Haddock v. Haddock, 201 U. S. 632, 50 L. 896, 26 Sup. Ct. 525, majority holding mere domicile of one party to marriage does not give state court jurisdiction to render divorce decree enforceable elsewhere against nonresident constructively served; dissenting opinion in Smith v. Willing, 123 Wis. 386, 101 N. W. 695, construing judgment note with name of payee in blank.

3 Wheat. 246-336, 4 L. 381, GELSTON v. HOYT.

Syl. 1 (I, 779). Direction of writ of error.

Approved in Kentucky v. Powers, 139 Fed. 489, 491, right of removal under Rev. St., § 641, is not affected by fact that rights thereunder may be enforced ultimately by proceedings in error in United States supreme court.

Syl. 7 (I, 781). Acquittal as res adjudicata.

Approved in United States v. Donaldson-Shulz Co., 142 Fed. 301, acquittal of obstructing stream in prosecution under 30 Stat. 1151, bars suit in equity to compel removal of same structure.

Syl. 9 (I, 781). Acquittal on seizure—Probable cause.

Approved in United States v. 83 Sacks of Wool, 147 Fed. 749, on judgment for claimant of property seized by customs officers for fraudulent importation, certificate of probable cause should be entered though verdict clearly right, where it is shown officers acted in good faith; Agnew v. Haymes, 141 Fed. 637, Rev. St., §§ 970, 989, do not authorize recovery against revenue officer for wrongful seizure when made upon probable cause and goods returned intact; State v. Cobb, 123 Iowa, 629, 99 N. W. 300, acquittal in prosecution for illegally keeping liquor for sale is bar to condemnation proceedings.

3 Wheat. 336-391, 4 L. 404, UNITED STATES v. BEVANS.

Syl. 3 (I, 787). Statutes—Construction of particular words.

Approved in United States v. Atchison etc. Ry. Co., 142 Fed. 191, construing bill for injunction against railroad for granting rebates and order made thereon.

Syl. 4 (I, 787). Admiralty—Crime committed out of states.

Approved in State v. Eldredge, 27 Utah, 487, 76 Pac. 340, legislature may authorize state board of equalization to assess property situated partly in one county and partly in another.

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3 Wheat. 449-453, 4 L. 432, BROWN v. JACKSON.

Syl. 3 (I, 789). Deed conveying title and interest.

See 105 Am. St. Rep. 862, note.

3 Wheat. 454-519, 4 L. 433, EVANS v. EATON.

Syl. 8 (I, 792). Patents—Effect of special acts.

Approved in Walker v. Globe Newspaper Co., 140 Fed. 312, right to maintain action at law for damages for infringement of copyright is not impliedly taken away by Rev. St., §§ 4965, 4970.

3 Wheat. 520-528, 4 L. 449, LENOX v. PROUT.

Syl. 4 (I, 794). Equity—Answer as proof.

Approved in Johnson v. Georgia Loan etc. Co., 141 Fed. 597, bona fide purchaser must allege and prove want of notice and actual payment of purchase price.

3 Wheat. 541-545, 4 L. 454, MURRAY v. BAKER.

Syl. 1 (I, 795). Limitations—"Beyond the seas" defined.

Cited in Osgood v. Central Vermont Ry. Co., 77 Vt. 339, 60 Atl. 138, 70 L. R. A. 930, arguendo.

3 Wheat. 546-563, 4 L. 456, THE AMIABLE NANCY.

Syl. 2 (I, 796). Marine trespass—Exemplary damages.

Approved in Pacific Packing etc. Co. v. Fielding, 136 Fed. 579, 580, 69 C. C. A. 325, corporation owner of vessel is not liable in punitive damages because of malicious action of master in imprisoning sailor while at sea, which was not authorized nor ratified by corporation. See 101 Am. St. Rep. 735, note.

Syl. 5 (I, 798). Prospective profits as damages.

Approved in Choctaw etc. R. R. Co. v. Jacobs, 15 Okl. 500, 82 Pac. 504, applying rule in action against railroad for delay in delivery of freight; Tootle v. Kent, 12 Okl. 391, 73 Pac. 315, applying rule to probable loss of profits to merchant whose store closed by reason of fraudulent chattel mortgage.

3 Wheat. 563-591, 4 L. 460, CRAIG v. LESLIE.

Syl. 1 (I, 799). Devise to trustee to sell.

Approved in Bank of Ukiah v. Rice, 143 Cal. 272, 101 Am. St. Rep. 118, 76 Pac. 1022, arguendo.

Syl. 2 (I, 802). Equitable conversion—Election to take land.

Approved in Whitfield v. Thompson, 85 Miss. 758, 38 So. 115, following rule; Nelson v. Nelson, 36 Ind. App. 336, 75 N. E. 681, under will giving property to wife and providing for its sale on her death, and division of proceeds among children, then equitable conversion is of date of his death, and children take vested interest as of that

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date; Atlee v. Bullard, 123 Iowa, 279, 98 N. W. 890, where testator devised land to wife till youngest child attained majority, when it was to be sold and proceeds divided between wife and children, in suit for partition wife's share subject to judgment lien.

3 Wheat. 591-594, 4 L. 467, CAMERON v. McROBERTS.

Syl. 1 (I, 804). Setting aside decree after term.

Approved in King v. Davis, 137 Fed. 227, court may after term control execution of final process issued on judgment to prevent injustice; United States v. Four Lorgnette Holders, 132 Fed. 565, judgment of forfeiture against imported merchandise for attempt to defraud customs laws cannot be vacated after term on account of irregularities in proceedings.

3 Wheat. 594-600, 4 L. 467, CRAIG v. REDFORD.

Syl. 2 (I, 807). Alien taking freehold.

Approved in Shea v. Nilima, 133 Fed. 215, 66 C. C. A. 263, agreement between two aliens to locate or acquire mining claims for joint benefit is enforceable by either.

3 Wheat. 610-644, 4 L. 471, UNITED STATES v. PALMER.

(I, 808.) Miscellaneous. Cited in State v. Foster, 187 Mo. 605, 86 S. W. 249, under Rev. St. 1899, § 2041, relating to bribery offense is misdemeanor, though punishable by imprisonment in penitentiary.

IV WHEATON.

4 Wheat. 1-51, 4 L. 499, TRUSTEES OF PHILADELPHIA BAPTIST ASSOCIATION v. HART.

Syl. 1 (I, 812). Charitable bequest—Unincorporated society.

Approved in Miller v. Ahrens, 150 Fed. 657, following rule; Weaver v. Spurr, 56 W. Va. 105, 48 S. E. 856, trust created by deed to trustees to be held in trust for Trinity Parish in certain town is void for uncertainty of purpose and as to beneficiaries.

Distinguished in Penny v. Central Coal & Coke Co., 138 Fed. 774, where unincorporated religious society had had uninterrupted possession of land in controversy for over thirty years and had used it as its own under lost deed, it is presumed that legal title conveyed to trustees for its benefit.

Syl. 3 (I, 813). Charitable trusts—Vagueness.

Approved in Miller v. Ahrens, 150 Fed. 653, holding trust created by will for benefit of foreign religious corporation, involving devise

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of three hundred and fifty-one acres of land in West Virginia, is contrary to public policy of that state, dissenting opinion in Danforth v. Oshkosh, 119 Wis. 290, 97 N. W. 268, majority holding where land devised to trustees to be conveyed to city for library, city took fee and did not hold land in trust.

4 Wheat. 52-73, 4 L. 512, THE DIVINA PASTORA.

Syl. 4 (I, 816). Admiralty—Remand to amend pleadings.

Approved in Graham v. Oregon etc. Co., 134 Fed. 693, court may permit libel in admiralty to be amended to show jurisdiction.

4 Wheat. 73-74, 4 L. 516, EVANS v. PHILLIPS.

Syl. 1 (I, 817). Error to nonsuit.

Approved in Francisco v. Chicago etc. R. Co., 149 Fed. 355, 356, where at close of trial defendant's motion for instructed verdict granted, but before instruction given plaintiff took involuntary nonsuit, latter could not appeal; Parks v. Southern Ry. Co., 143 Fed. 278, and Huntt v. McNamee, 141 Fed. 295, both holding where voluntary nonsuit was permitted by state practice, federal court has discretion to refuse nonsuit after plaintiff had concluded evidence and motion of defendant for direction of verdict had been sustained.

4 Wheat. 77-83, 4 L. 518, WILLIAMS v. PEYTON'S LESSEE.

Syl. 3 (I, 821). Deed depending on matter in pais.

Approved in dissenting opinion in Delta Co. Land etc. Co. v. Tallcott, 17 Colo. App. 340, 68 Pac. 993, majority holding when trustees' release, executed after maturity of note secured, recited payment and execution at payee's instance, an assignee of note, which had not in fact been paid, cannot cancel release against subsequent mortgagee of land.

4 Wheat. 108-121, 4 L. 526, UNITED STATES v. HOWLAND.

Syl. 3 (I, 823). Federal equity not controlled by states.

Approved in First Nat. Bank of Plattsmouth v. Gibson, 69 Neb. 26, 94 N. W. 967, in equity suit to reach property fraudulently transferred, debtor being necessary party, suit may be commenced in county of his residence.

4 Wheat. 122-208, 4 L. 529, STURGES v. CROWNINSHIELD.

Syl. 3 (I, 832). Suspension of state bankruptcy laws.

Approved in In re J. H. Alison Lumber Co., 137 Fed. 643, following rule; Boston etc. Co. v. Ould-Carter Co., 123 Ga. 463, 51 S. E. 468, in absence of proceedings in federal courts, state court has jurisdiction of cases within insolvent trader's act; Grunsfeld Bros. v. Brownell, 12 N. M. 198, 200, 76 Pac. 311, 312, Sess. Laws 1889, c. 67, prohibiting debtors from preferring creditors is not bankruptcy law and

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is not suspended by federal bankruptcy law; Allen v. Reed, 10 Okl. 125, 60 Pac. 788, holding void act of 1893, relating to change of county seats as inconsistent with act of Congress of 1893, for opening of Cherokee Outlet.

Syl. 4 (I, 834). Insolvent laws—Impairment of contracts.

Approved in In re Salmon, 143 Fed. 405, Rev. St. Mo., §§ 1305, 1306, relating to insolvent state banks, was suspended by bankruptcy act, and participation by creditors in proceedings thereunder did not estop creditors from thereafter prosecuting bankruptcy proceedings against debtors.

Syl. 6 (I, 838). Contract defined.

Approved in Myers v. Knickerbocker Trust Co., 139 Fed. 115, holding void Acts Gen. Assem., Mo., 1904, p. 179, c. 101, repealing remedy of creditor to bring action at law to enforce stockholder's statutory liability; McCormick v. Bonfils, 9 Okl. 616, 60 Pac. 299, construing correspondence with reference to sale of realty.

Syl. 8 (I, 839). Impairment of obligation of contracts.

Approved in Lamb v. Powder Riv. etc. Co., 132 Fed. 440, 67 L. R. A. 558, 65 C. C. A. 570, law of state unreasonably restricting time for commencing suit on foreign judgments on existing contracts is void.

Syl. 11 (I, 847). Construction—Intent of instrument.

Approved in Jacobson v. Massachusetts, 197 U. S. 22, 49 L. 648, 25 Sup. Ct. 358, upholding Massachusetts compulsory vaccination act; Ex parte Anderson, 46 Tex. Cr. 379, 81 S. W. 975, city court has no jurisdiction to try an accused for alleged violation of state penal statute; dissenting opinion in Blair v. Chicago, 201 U. S. 502, 50 L. 843, 26 Sup. Ct. 427, majority holding right to operate street railways under acts of 1859 and 1865 is confined to streets designated in original ordinance. See 103 Am. St. Rep. 866, note.

4 Wheat. 209-213, 4 L. 552, McMILLAN v. McNEILL.

Syl. 2 (I, 850). Insolvency laws—Debts prior to.

Approved in In re Salmon, 143 Fed. 405, Rev. St. Mo., §§ 1305, 1306, relating to insolvent state banks, was suspended by bankruptcy act, and participation by creditors in proceedings thereunder did not estop creditors from thereafter prosecuting bankruptcy proceeding against debtors.

4 Wheat. 225-230, 4 L. 556, ELIASON v. HENSHAW.

Syl. 1 (I, 856). Contracts—Acceptance of offer.

Approved in Couch v. McCoy, 138 Fed. 703, offer to give option to purchase realty where written contract embodying terms of option is clearly contemplated does not constitute binding contract till writing duly executed; Metropolitan Coal Co. v. Bontell, 185 Mass.

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395, 70 N. E. 422, applying rule to offer to charter vessels; Henry v. Black, 213 Pa. 627, 63 Atl 253, applying principle to offer to purchase land by holder of option.

4 Wheat. 235-246, 4 L. 559, BANK OF COLUMBIA v. OKLEY.

Syl. 3 (I, 860). Law of land defined.

Approved in McKinster v. Sager, 163 Ind. 676, 106 Am. St. Rep. 268, 72 N. E. 856, 68 L. R. A. 273, holding void acts 1903, p. 276, c. 153, making sales by merchant of stock, save in due course of trade, void as to creditors whose claims arise from sale of some of stock except under certain conditions; State v. Missouri Tie etc. Co., 181 Mo. 559, 103 Am. St. Rep. 614, 80 S. W. 941, 65 L. R. A. 588, holding void Missouri statute making it crime to pay wages with orders or other evidence of investment unless same is negotiable; Aldredge v. School District No. 16, 10 Okl. 697, 65 Pac. 96, holding condemnation of private property for school uses void where no notice of condemnation given owner; State v. Stimpson, 78 Vt. 134, 62 Atl. 17, 1 L. R. A. (N. S.) 1153, upholding act providing for prosecution by information of all crimes except those punishable by death or life imprisonment; dissenting opinion in Crane v. Waldron, 133 Mich. 88, 94 N. W. 598, majority upholding Act 99 of 1897, relating to evidence in suits in aid of execution.

4 Wheat. 246-255, 4 L. 562, UNITED STATES v. RICE.

Syl. 1 (I, 863). Revenue laws over conquered lands.

Approved in Lincoln v. United States, 197 U. S. 428, 49 L. 818, 25 Sup. Ct. 455, duties on imports from United States into Manila not justified because of insurrection after Spanish treaty under order of President issued during war.

(I, 863.) Miscellaneous. Cited in Cullins v. Overton, 7 Okl. 482, 54 Pac. 705, as to validity of acts of de facto government.

4 Wheat. 316-437, 4 L. 579, McCULLOCH v. STATE OF MARYLAND.

Syl. 2 (I, 870). Construction of constitution.

Approved in In re Strauss, 197 U. S. 330, 49 L. 778, 25 Sup. Ct. 535, one against whom complaint for felony is filed before magistrate is "charged" with crime within provisions of federal law as to extradition; Ex parte Anderson, 46 Tex. Cr. 399, 81 S. W. 987, city court has no jurisdiction to try accused for violation of state penal statute.

Syl. 3 (I, 871). Federal government—Enumerated powers.

Approved in Ex parte Anderson, 46 Tex. Cr. 380, 81 S. W. 976, city court has no jurisdiction to try an accused for alleged violation of state penal statute.

Distinguished in Northern Securities Co. v. United States, 193 U. S. 336, 48 L. 700, 24 Sup. Ct. 436, upholding anti-trust act of July 2, 1890.

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Syl. 4 (I, 871). Power of Congress over banks.

Approved in Christopher v. Norvell, 201 U. S. 226, 50 L. 736, 26 Sup. Ct. 502, coverture of legatee of shares in national bank when name placed on books as stockholder is no bar to judgment due on assessment by comptroller of currency.

Syl. 5 (I, 872). Congress—Means employable to execute powers.

Approved in McCray v. United States, 195 U. S. 56, 59, 49 L. 96, 97, 24 Sup. Ct. 769, upholding 24 Stat. 209, 840, as amended in 1902, imposing tax on artificially colored oleomargarine; Missouri etc. Ry. Co. v. May, 194 U. S. 269, 48 L. 972, 24 Sup. Ct. 638, upholding Tex. Stat. 1901, c. 117, imposing penalty on railroads for allowing Johnson grass or thistle to mature and go to seed; Brooks v. Southern Pac. Co., 148 Fed. 990, holding void federal employer's liability act of 1906; United States v. Scott, 148 Fed. 432, holding void act of 1898, making it penal for interstate carrier to discriminate against labor unions.

Syl. 7 (I, 879). State tax on national agencies.

Approved in Hibernia Savings etc. Soc. v. San Francisco, 200 U. S. 313, 50 L. 496, 26 Sup. Ct. 265, United States Treasury checks for interest on government bonds, where intended for immediate payment, are taxable by state in hands of owner; South Carolina v. United States, 199 U. S. 452, 455, 466, 50 L. 266, 267, 271, 26 Sup. Ct. 110, United States may exact revenue license from dispensing agent of state which has taken charge of liquor business; United States v. Thurston Co., 143 Fed. 289, lands allotted to Indians under 22 Stat. 342, are exempt from state taxation during period of trust; People's Sav. Bank v. Layman, 134 Fed. 638, assessing property of saving bank under Code Iowa, § 1322, providing that assessment be made on its shares of stock, fact that part of assets consist of government bonds does not entitle bank to deduction of such amount; United States v. Moore, 129 Fed. 634, denying federal jurisdiction to punish conspiracy to oppress and intimidate citizen to prevent him from establishing miners' union in a state, in furtherance of which defendants shot citizen; Western Union Tel. Co. v. Wakefield, 69 Neb. 277, 95 N. W. 661, holding void village ordinance imposing occupation tax on telegraph companies doing business in village in so far as it taxes business of company transacted for government; Old Nat. Bank v. State, 58 W. Va. 560, 52 S. E. 494, United States bonds held by national bank as part of its capital cannot be taxed under state authority.

Syl. 8 (I, 883). Limits of taxing power.

Approved in Michigan etc. R. R. Co. v. Powers, 201 U. S. 295, 50 L. 762, 26 Sup. Ct. 466, upholding Mich. Pub. Acts 1901, No. 173, for taxation of railroads; Michigan R. R. Tax Cases, 138 Fed. 234, upholding Pub. Acts Mich. 1901, p. 236, relating to assessment of railroads by state board of assessors; Parsons v. People, 32 Colo. 235, 76 Pac. 670, upholding Sess. Laws 1902, pp. 47, 48, c. 3, § 18, taxing

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liquor sellers; Eddy v. People, 218 Ill. 616, 75 N. E. 1072, under Laws 1879, p. 72, §§ 2, 3, board of trustees in passing on right of applicant to pension exercises quasi-judicial power, and its finding, when made, cannot be reviewed, except for want of authority to act or fraud; Kersey v. Terre Haute, 161 Ind. 474, 68 N. E. 1029, upholding ordinance imposing tax on vehicles using streets, though street-cars, automobiles and vehicles of nonresidents are exempt; Hodge v. Muscatine County, 121 Iowa, 489, 104 Am. St. Rep. 304, 96 N. W. 971, 67 L. R. A. 624, upholding Code, § 5007, imposing tax on vendor of cigarettes and on buildings used in their manufacture or sale; People v. Ronner, 185 N. Y. 291, 77 N. E. 1063, upholding Laws 1905, p. 2059, c. 729, providing for taxation of real estate mortgages; Pryor v. Bryan, 11 Okl. 363, 66 Pac. 350, upholding act exempting for taxation all property on Indian reservation attached to county for tax purposes, except for territorial and court funds; dissenting opinion in State v. Chicago etc. Ry. Cos., 128 Wis. 519, 108 N. W. 615, majority holding exactions by state from railroads during years preceding ad valorem tax law not taxes within uniform tax clause of constitution.

Syl. 9 (I, 885). Taxation incident to sovereignty.

Approved in Union etc. Transit Co. v. Kentucky, 199 U. S. 205, 50 L. 154, 26 Sup. Ct. 36, tax of domestic corporation under Ky. St., § 4020, on rolling stock located in other states, is void; Davis v. Cleveland etc. Ry. Co., 146 Fed. 409, cars owned by railroad and delivered by it to other company, loaded with freight to be used to transport such freight to other states and then returned to owner, are not subject to attachment under laws of state into which they are carried; Buck v. Beach, 164 Ind. 41, 108 Am. St. Rep. 272, 71 N. E. 964, where notes owned by nonresident were kept in state, they are taxable there, though they are temporarily removed each year prior to assessment day; State v. Fidelity etc. Co., 35 Tex. Civ. 217, 80 S. W. 546, municipal securities deposited with state treasurer by foreign corporation in accordance with laws relating to foreign surety companies are taxable in state; Noble v. Amorette, 11 Wyo. 251, 71 Pac. 881, state tax on stock of goods of licensed Indian trader, located on reservation, is not tax on agency of government.

(I, 870.) Miscellaneous. Cited in dissenting opinion in Lochner v. New York, 198 U. S. 68, 49 L. 946, 25 Sup. Ct. 539, majority holding void N. Y. Laws 1897, c. 415, art. 8, § 110, limiting hours of labor in bakeries.

4 Wheat. 438-444, 4 L. 609, THE GENERAL SMITH.

Syl. 1 (I, 893). Admiralty repairs in foreign port.

Approved in The Wyandotte, 136 Fed. 473, where purchaser of draft drawn by master in foreign port for advances to pay charges had no knowledge of master's possession of freight drafts, fact that

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charter provided that advancements were payable out of freight only is no defense to draft.

Syl. 3 (I, 895). Admiralty—Repairs in home port.

Approved in Fredericks v. Jas. Rees & Sons Co., 135 Fed. 731, 68 C. C. A. 368, and The Sue, 137 Fed. 135, both following rule; Commonwealth v. Ayer etc. Tie Co., 117 Ky. 169, 77 S. W. 688, home port of vessel engaged in interstate commerce is its situs for taxation though owner resides in different state.

Syl. 4 (I, 899). Admiralty—Lien—Repairs in home port.

Approved in The Sue, 137 Fed. 135, following rule; Downey v. Lozier Motor Co., 138 Fed. 176, where libelants, who equipped boat with engine, surrendered boat without payment, right to lien not revived by subsequent delivery of vessel to them for repairs.

4 Wheat. 453-465, 4 L. 613, ORR v. HODGSON.

Syl. 3 (I, 901). Aliens are not heirs.

Approved in Ehrlich v. Weber, 114 Tenn. 719, 88 S. W. 189, applying rule under Acts 1875, p. 4, c. 2, and Acts 1883, p. 330, c. 250, §§ 1, 2.

Distinguished in Cooke v. Doron, 215 Pa. 395, 64 Atl. 595, under act Feb. 23, 1791, alien husband is entitled as tenant by curtesy to realty of which wife died seised.

4 Wheat. 466-488, 4 L. 616, ASTOR v. WELLS.

Syl. 2 (I, 902). Recordation of deed where county divided.

Approved in Richardson v. Shelby, 3 Okl. 80, 41 Pac. 382, to have effect of notice to creditors chattel mortgage and its registry must comply with law.

4 Wheat. 513-518, 4 L. 908, BOYD v. GRAVES.

Syl. 1 (I, 908). Parol agreement to fix boundary.

Approved in Kitchen v. Chantland, 130 Iowa, 624, 105 N. W. 368, parol agreement fixing location of disputed boundary line followed by possession is not invalid within statute of frauds. See 110 Am. St. Rep. 680, note.

4 Wheat. 518-715, 4 L. 629, TRUSTEES OF DARTMOUTH COLLEGE v. WOODWARD.

Syl. 1 (I, 914). Charter is contract.

Approved in Blair v. Chicago, 201 U. S. 471, 50 L. 831, 26 Sup. Ct. 427, construing street railway franchise granted under Illinois acts of 1859 and 1865; Allen v. Ajax Min. Co., 30 Mont. 502, 77 Pac. 48, as to corporation organized in 1889, act of 1899, conferring on corporation right to sell its property on vote of two-thirds of stockholders, was not void; Northwestern Tel. Ex. Co. v. Anderson, 12 N. D. 590,

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102 Am. St. Rep. 589, 98 N. W. 708, 65 L. R. A. 771, determining relative rights of telephone company and house-movers; State v. Irvine, 14 Wyo. 374, 84 Pac. 101, Wyoming Agricultural College created by act of 1891 was public corporation, and state could repeal act incorporating it; dissenting opinion in Metcalfe v. Union Trust Co., 181 N. Y. 60, 73 N. E. 505, majority holding trust fund created by will to provide income for wife until she should remarry, release of remainder to her by children did not terminate trust under act of 1897, where will made in 1892, in which year testator died.

Syl. 2 (I, 944). Law of the land defined.

Approved in In re Francis, 136 Fed. 913, appointment of receiver under bankruptcy act, 30 Stat. 545, before adjudication without notice to incarcerated defendant is valid; St. Louis v. Galt, 179 Mo. 17, 77 S. W. 879, 63 L. R. A. 778, upholding ordinance making it a misdemeanor to permit growth of weeds on his premises; Clapp v. Houg, 12 N. D. 608, 102 Am. St. Rep. 589, 98 N. W. 713, 65 L. R. A. 757, holding void statute providing for special administration of estate of one whose death not satisfactorily proven, but who disappeared under circumstances giving ground for belief he is dead or unlawfully secreted; dissenting opinion in Crane v. Waldron, 133 Mich. 88, 94 N. W. 598, majority upholding Comp. Laws, § 10,203, relating to evidence in suits in aid of execution; dissenting opinion in Daniels v. Homer, 139 N. C. 238, 51 S. E. 999, 3 L. R. A. (N. S.) 997, majority upholding acts Gen. Assem. 1905, c. 292, regulating fishing and providing for seizure of appliances used in illegal fishing.

Syl. 3 (I, 947). Law declared void, when.

Approved in Board of Commrs. v. Tollman, 145 Fed. 766, upholding Laws N. C. 1885, p. 439, c. 233, incorporating railroad and authorizing issuance of county aid bonds; Ex parte Kair, 28 Nev. 146, 80 Pac. 466, upholding Stat. 1903, p. 33, c. 10, imposing penalty on anyone working more than eight hours a day in mine or smelter.

Syl. 5 (I, 948). Constitutional restraint on regulation of institutions.

Approved in State v. Sowell, 143 Ala. 499, 39 So. 248, holding void, appropriation for Alabama Medical College, as it was not under absolute control of state.

Syl. 6 (I, 949). Charters of public corporations not contracts.

Approved in Saginaw County Suprs. v. Hubinger, 137 Mich. 76, 100 N. W. 263, upholding Loc. Acts 1899, p. 221, No. 419, as amended in 1901, providing for county road system in certain county, and impliedly repealing prior act; Mial v. Ellington, 134 N. C. 140, 46 S. E. 964, 65 L. R. A. 69, officer appointed for definite time to public office has no vested property interest therein, or contract right thereto, of which legislature cannot deprive him; dissenting opinion in Ex parte Lewis, 45 Tex. Cr. 37, 108 Am. St. Rep. 929, 73 S. W. 823, majority holding Galveston special charter of 1901 violates

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principle of local self-government; State v. Bryan, 50 Fla. 359, 39 So. 950, arguendo.

Syl. 8 (I, 951). Corporate powers limited by charter.

Approved in United States v. MacAndrews & Forbes Co., 149 Fed. 835, corporation may be indicted for conspiracy to violate anti-trust law.

Syl. 14 (I, 955). Legislative grant is contract.

Approved in dissenting opinion in Rochester v. Rochester Ry Co., 182 N. Y. 124, 70 L. R. A. 773, 74 N. E. 961, majority holding where railroad purchased at foreclosure sale franchise of prior company, immunity from contribution for new pavements conferred by statute on such company was not contract right of which company could not be deprived by subsequent statute.

Distinguished in Spencer v. Seaboard etc. Ry. Co., 137 N. C. 121, 49 S. E. 1017, permitting consolidation of railroads under act of 1901, authorizing payment of value of dissenting stock, though stock purchased prior to constitution reserving right to state to amend charters.

Syl. 17 (I, 957). Visitorial powers over charitable corporations.

Approved in Guthrie v. Harkness, 199 U. S. 157, 158, 50 L. 133, 134, 26 Sup. Ct. 4, common-law right of stockholder to inspect books of corporation is not restricted as to national banks by Rev. St., § 5241. See 107 Am. St. Rep. 672, note.

Syl. 19 (I, 958). Public and private corporations.

Approved in Ismon v. Loder, 135 Mich. 351, 97 N. W. 771, mortgage of agricultural society signed by president and secretary thereof with character "[Seal]" opposite their signatures, is mortgage of society.

V WHEATON.

5 Wheat. 1-76, 5 L. 19, HOUSTON v. MOORE.

Syl. 5 (II, 6). Concurrent state jurisdiction.

Approved in Jackman v. Eau Claire Nat. Bank, 125 Wis. 481, 104 N. W. 103, state court has jurisdiction of action by trustee to recover value of property transferred as preference.

Syl. 7 (II, 6). Concurrent state and federal powers.

Distinguished in dissenting opinion in Allen v. Reed, 10 Okl. 157, 63 Pac. 877, majority holding void act relating to changes in county seats.

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5 Wheat. 76-116, 5 L. 37, UNITED STATES v. WILTBERGER.

Syl. 1 (II, 11). Penal laws strictly construed.

Approved in Burton v. United States, 202 U. S. 378, 391, 50 L. 1070, 1075, 26 Sup. Ct. 688, agreement to receive and receipt of forbidden compensation are separate offenses under Rev. St., § 1782; Hackfeld v. United States, 197 U. S. 450, 49 L. 830, 25 Sup. Ct. 456, ship owners who have wrongfully brought in aliens into United States and have received them for deportation, are not insurers of return of immigrants under 26 Stat. 1084; Northern Securities Co. v. United States, 193 U. S. 358, 359, 48 L. 709, 24 Sup. Ct. 436, construing and upholding anti-trust act of July 2, 1890 (26 Stat. 209); United States v. Ninety-nine Diamonds, 139 Fed. 964, 2 L. R. A. (N. S.) 185, under 26 Stat. 135, use of statement by one having lien on imported goods that he was owner thereof, to make entry, is no offense; Field v. United States, 137 Fed. 8, 69 C. C. A. 568, officer of bankrupt corporation, who is not and has not been bankrupt, is not punishable under 30 Stat. 554, for fraudulently concealing property of bankrupt corporation from trustee; United States v. York, 131 Fed. 328, construing Rev. St., §§ 5424-5426, relating to aiding or abetting false citizenship; Kuhn v. Kuhn, 125 Iowa, 452, 101 N. W. 152, under Codes, § 3386, widow who murdered husband not deprived of distributive share of his estate under Code, § 3366, as matter of contract; Commonwealth v. Trent, 117 Ky. 45, 77 S. W. 393, construing Ky. St., §§ 3910-3914, regulating waste of gas and enjoining plugging of wells not in use; State v. Foutenot, 112 La. 642, 36 So. 635, indictment for burning merry-go-round does not allege crime under Rev. St., § 847, unless it alleges outfit formed part of stock of goods or was being held as article of trade; State v. Woodward, 182 Mo. 407, 103 Am. St. Rep. 646, 81 S. W. 862, under Rev. St. 1899, § 2043, relating to jury-bribing evidence showing proposal of willingness to give bribe to bias juror's verdict is sufficient; Gates etc. Co. v. Richmond, 103 Va. 704, 49 S. E. 965, one occasionally placing skid to move goods from store to delivery wagon does not violate ordinance against projections into street.

Syl. 2 (II, 15). Construction of unambiguous statute.

Approved in The Ben R., 134 Fed. 786, 67 C. C. A. 290, under Comp. St. 1901, p. 3029, and Comp. St. 1901, p. 3060, vessels are not subject to seizure and forfeiture for violations of first act; Choctaw etc. R. R. Co. v. Alexander, 7 Okl. 595, 54 Pac. 422, construing act regulating prairie fires.

5 Wheat. 116-127, 5 L. 465, McCLUNG v. ROSS.

Syl. 1 (II, 17). Requisites of tax deed.

Distinguished in Taylor v. Huntington, 34 Wash. 458, 459, 75 Pac. 1105, judgment of court of general jurisdiction foreclosing tax lien not vacatable on ground that publication of notice was defective and

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because it did not appear that holder of certificate of delinquency had paid accrued taxes.

Syl. 3 (II, 17). Ouster by tenant in common.

Approved in Rich v. Victoria etc. Min. Co., 147 Fed. 386, in ejectment by one tenant in common against another, instruction that it is sufficient to create adverse possession, that possession was such that neighbors appreciated that defendant had possession and claimed exclusive right to whole property, is proper. See 109 Am. St. Rep. 620, note.

5 Wheat. 277-290, 5 L. 87, MANDEVILLE v. WELCH.

Syl. 4 (II, 26). Order for part of fund not assignment.

Approved in Reviere v. Chambliss, 120 Ga. 716, 48 S. E. 123, unaccepted check is not assignment of money to credit of drawer.

Syl. 5 (II, 28). Equitable assignment of fund.

Approved in Barnsdall v. Waltemeyer, 142 Fed. 419, following rule; In re Oliver, 132 Fed. 589, where bankrupt drew two drafts on agent collecting his rents, each reciting "value received and charge to rents for 1903," and were discovered by bank after payee's acceptance, and bankruptcy occurred before maturity, drafts were lien on funds in hands of trustee.

Syl. 6 (II, 29). Credit cannot split cause of action.

Approved in Firemen's Fund Ins. Co. v. Oregon R. Co., 45 Or. 59, 76 Pac. 1076, 67 L. R. A. 161, where insurer pays loss under policy in sum less than insured's loss and takes subrogation assignment for sum paid, insurer and insured may maintain joint action against wrongdoer causing loss.

5 Wheat. 293-312, 5 L. 92, POLK'S LESSEE v. WENDELL.

Syl. 2 (II, 31). Grant when state lacks title.

Approved in Reeve v. North Carolina Land etc. Co., 141 Fed. 822, 823, 824, 825, under Tennessee statute governing grants of state lands, older of two conflicting grants, each based on void entry, passes state's title.

5 Wheat. 317-325, 5 L. 98, LOUGHBOROUGH v. BLAKE.

Syl. 4 (II, 33). Direct congressional taxes.

Approved in Binns v. United States, 194 U. S. 492, 48 L. 1089, 24 Sup. Ct. 816, license fees imposed on certain business by Alaska Penal Code, § 460, are not excises levied to pay debts and provide for common defense and general welfare, but are local taxes.

5 Wheat. 326-338, 5 L. 100, MECHANICS' BANK v. BANK OF COLUMBIA.

Syl. 1 (II, 34). Parol to explain contract.

Approved in Laclede Construction Co. v. Moss Tie Co., 185 Mo. 68, 84 S. W. 89, admitting parol evidence to explain contract for

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sale of railroad ties as may be needed during certain year; Janes v. Citizens' Bank, 9 Okl. 557, 60 Pac. 293, admitting parol to show note signed by defendant in official capacity as secretary of corporation.

5 Wheat. 359-374, 5 L. 109, BLAKE v. DOHERTY.

Syl. 1 (II, 39). Sufficiency of description in deed.

Approved in Holley v. Curry, 58 W. Va. 73, 112 Am. St. Rep. 946, 51 S. E. 136, upholding sufficiency of description of land as "72 acres of land situate near Hamlin, the same bought of the land company."

Syl. 2 (II, 40). Effect of private survey.

Approved in United States v. Montana Lumber etc. Co., 196 U. S. 578, 49 L. 605, 25 Sup. Ct. 367, private survey is inadmissible in action by government for value of timber cut from unsurveyed lands, to show that lands when surveyed will be included in railroad grant.

5 Wheat. 374-385, 5 L. 113, HANDLEY v. ANTHONY.

Syl. 1 (II, 41). Boundaries—Middle of stream.

Approved in Moore v. McGuire, 142 Fed. 790, construing act of 1817, admitting Mississippi into Union as fixing western boundary in middle of main channel of Mississippi river.

Syl. 2 (II, 41). Boundaries—State grant bordering on river.

Approved in Peoria v. Central Nat. Bank, 224 Ill. 57, 79 N. E. 300, water's edge and not surveyed meander line is shore line from which lines should be drawn to show water and accretion rights of adjacent riparian proprietors; State v. Faudre, 54 W. Va. 124, 136, 102 Am. St. Rep. 927, 46 S. E. 270, 274, 63 L. R. A. 877, West Virginia cannot punish one acting under Ohio ferry franchise for charging one coming from Ohio more than is allowed by West Virginia law for ferriage over Ohio river.

5 Wheat. 385-393, 5 L. 115, LA AMISTAD v. DE RUES.

Syl. 1 (II, 44). Probable profits as damages.

Approved in Choctaw etc. R. R. Co. v. Jacobs, 15 Okl. 500, 82 Pac. 504, determining damages for delay in delivery of freight; Tootle v. Kent, 12 Okl. 691, 73 Pac. 315, allowing recovery of probable profits to merchant whose store closed as result of fraudulent chattel mortgage.

Distinguished in Chisholm etc. Mfg. Co. v. U. S. Canopy Co., 111 Tenn. 210, 77 S. W. 1064, allowing lost profits as damages for breach of contract to manufacture and deliver patented article.

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5 Wheat. 420-424, 5 L. 124, OWINGS v. SPEED.

Syl. 4 (II, 46). Corporation's books as evidence.

Approved in Chesapeake etc. Ry. Co. v. Deepwater Ry. Co., 57 W. Va. 686, 687, 50 S. E. 909, determining extent of admissibility of books and records of private corporation in its favor in controversy between it and stranger.

5 Wheat. 424-428, 5 L. 125, CONNECTICUT v. PENNSYLVANIA.

Syl. 1 (II, 48). Record should show parol testimony in equity.

Distinguished in New England Phon. Co. v. National Phon. Co., 148 Fed. 324, witness whose testimony is being taken orally before examiner under equity rule 67 cannot refuse to answer question because it is immaterial.

Syl. 3 (II, 48). All necessary parties must be before court.

Approved in Lynch v. United States, 13 Okl. 158, 73 Pac. 1106, applying rule in suit to cancel townsite patent.

VI WHEATON.

6 Wheat. 104-106, 5 L. 216, LINDENBERGER v. BEALL.

Syl. 2 (II, 52). Evidence of notice to indorser.

Approved in Nelson v. Grondahl, 13 N. D. 368, 100 N. W. 1095, notary's testimony that he invariably presented notes for payment at place where they were made payable is admissible to establish place of presentment, where certificate of protest fails to show place and notary has no specific recollection of presentment.

6 Wheat. 106-109, 5 L. 217, MECHANICS' BANK OF ALEXANDRIA v. WITHERS.

Syl. 1 (II, 53). Adjournment to distant day.

Approved in In re Dossett, 2 Okl. 381, 382, 37 Pac. 1070, 1071, district court may hold adjourned sessions after commencement of regular term at time not designated in order of supreme court fixing time when terms of said court shall begin; Mann v. County Court, 58 W. Va. 658, 52 S. E. 778, construing Code 1899, c. 144, § 2, authorizing circuit and county courts to adjourn from day to day till business concluded or until end of term.

6 Wheat. 109-118, 5 L. 218, HOPKINS v. LEE.

Syl. 1 (II, 54). Conclusiveness of judgments.

Approved in Kittel v. Trustees etc. of Improvement Fund, 139 Fed. 956, holding trustees of internal improvement fund of Florida

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estopped by appearance in prior suit involving certificate as to swamp lands which they relied on as defense; Georgia etc. Co. v. Wright, 132 Fed. 917, decree in suit by Georgia against corporation that charter created contract which precluded greater tax than half of one per cent of net earnings is res adjudicata in suit involving taxes for other years; Territory v. Hopkins, 9 Okl. 150, 59 Pac. 981, determining conclusiveness of decree in statutory proceedings to determine validity of bonds.

Syl. 2 (II, 57). Damages on nondelivery.

Approved in Roberts v. McFadden, 32 Tex. Civ. 55, 74 S. W. 110, where title offered by vendor is not marketable, vendee may have rescission but cannot recover damages for loss of bargain. See 106 Am. St. Rep. 971, note.

6 Wheat. 131-135, 5 L. 224, FARMERS' AND MECHANICS' BANK v. SMITH.

Syl. 1 (II, 65). Insolvency law discharging contracts.

Approved in In re Salmon, 143 Fed. 405, Missouri Rev. St. 1899, §§ 1305, 1306, relating to liquidation of banks, was suspended by bankruptcy act and participation of creditors in proceedings thereunder did not estop them from proceeding in bankruptcy against debtors; Boviard etc. Co. v. Ferguson, 215 Pa. 239, 64 Atl. 514, arguendo.

6 Wheat. 135-146, 5 L. 225, UNITED STATES v. WILKINS.

Syl. 1 (II, 67). Setoff against government.

Approved in United States v. Gillies, 144 Fed. 991, in action by United States to recover alleged debt, defendant cannot recover affirmative judgment against government on counterclaim, although it may be determined that there is balance due him.

6 Wheat. 146-152, 5 L. 228, YOUNG v. BRYAN.

Syl. 1 (II, 68). Jurisdiction—Suit by indorsee—Citizenship.

Approved in Kolze v. Hoadley, 200 U. S. 83, 50 L. 381, 26 Sup. Ct. 220, suit by assignee to foreclose trust deed is not maintainable in federal court unless assignor could sue there, though bill prays cancellation of release of trust deeds to grantor as in fraud of complainant's rights.

6 Wheat. 187-192, 5 L. 238, THE ROBERT EDWARDS.

Syl. 1 (II, 71). Weight of circumstantial evidence.

See 97 Am. St. Rep. 774, note.

6 Wheat. 194-203, 5 L. 239, THE COLLECTOR.

Syl. 1 (II, 71). Effect of appeals in rem.

Approved in First Nat. Bank v. State Nat. Bank, 131 Fed. 431, 65 C. C. A. 414, where appeal has been perfected under bankruptcy

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act from judgment allowing or rejecting debt, district court cannot entertain motion for rehearing while appeal is pending.

6 Wheat. 204-235, 5 L. 242, ANDERSON v. DUNN.

Syl. 3 (II, 73). Congress may punish contempts.

Approved in Ex parte Parker, 74 S. C. 473, 55 S. E. 125, as to powers of legislative committees to punish for contempt.

6 Wheat. 264-448, 5 L. 257, COHEN v. VIRGINIA.

Syl. 4 (II, 77). Federal jurisdiction—Federal questions.

Approved in Kentucky v. Powers, 201 U. S. 38, 50 L. 650, 26 Sup. Ct. 387, denial in summoning or impaneling jurors of any civil rights secured to accused by federal law does not, unless authorized by state law, give right to remove prosecution to federal court; Anthony v. Burrow, 129 Fed. 787, question whether county is lawfully included in congressional district where it was placed by act of legislature is not federal question.

Syl. 5 (II, 80). Constitutional construction—Affirmative words.

Approved in Higgins v. Tax Assessors of Pawtucket, 27 R. I. 405, 63 Atl. 36, upholding Practice Act 1905, § 12, giving superior court jurisdiction over extraordinary writs.

Syl. 7 (II, 81). Dicta not controlling.

Approved in Harriman v. Northern Securities Co., 197 U. S. 291, 49 L. 761, 25 Sup. Ct. 493, Linstroth Wagon Co. v. Ballew, 149 Fed. 965, In re Sullivan, 148 Fed. 816, Traer v. Fowler, 144 Fed. 817, Wabash R. Co. v. De Tar, 141 Fed. 938, Kentucky v. Powers, 139 Fed. 482, Ex parte Riggins, 134 Fed. 423, St. Louis etc. Ry. Co. v. Davis, 132 Fed. 635, Southern Ry. Co. v. Simpson, 131 Fed. 709, 65 C. C. A. 563, Clancy v. Barker, 131 Fed. 168, 69 L. R. A. 653, 66 C. C. A. 469, and Rodwell v. Rowland, 137 N. C. 638, 50 S. E. 327, all following rule; Macon City etc. R. Co. v. Wolf, 148 Fed. 968, applying rule in determining damages in eminent domain.

Syl. 10 (II, 83). Suit defined.

Approved in Dorr Cattle Co. v. Des Moines Nat. Bank, 127 Iowa, 162, 98 N. W. 922, where remedy for tort is created by statute, remedy, including items of damage recoverable, is governed by law of place of suit.

Syl. 11 (II, 83). Writ of error brings record.

Approved in Bradford v. Southern Ry. Co., 195 U. S. 248, 49 L. 181, 25 Sup. Ct. 55, under 27 Stat. 252, relating to suits in forma pauperis, writ of error from circuit court of appeals cannot be prosecuted without giving security for costs.

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Syl. 12 (II, 85). Writ of error is not suit.

Approved in State v. Chittenden, 127 Wis. 494, 107 N. W. 508, independent proceeding commenced by an original writ is an action under Rev. St. 1898, § 2595.

Syl. 14 (II, 85). United States is nation.

Approved in Northern Securities Co. v. United States, 193 U. S. 333, 336, 48 L. 698, 24 Sup. Ct. 436, upholding anti-trust act of July 2, 1890.

Syl. 15 (II, 86). Contemporaneous exposition of constitution.

Approved in State v. New Orleans Ry. & L. Co., 116 La. 148, 40 So. 598, applying rule where under two constitutions exempting manufacturers from taxation, legislature for twenty years imposed license tax on electric companies; State v. Northern Pac. Ry. Co., 95 Minn. 47, 103 N. W. 732, foreign railroad paying taxes under gross earnings law may deduct debts from credits, though it has failed to list credits; Henry v. State, 87 Miss. 57, 39 So. 871, upholding Rev. Code 1892, § 3201, providing for working of convicts on farm leased for that purpose; Ex parte Anderson, 46 Tex. Cr. 399, 81 S. W. 987, city court has no jurisdiction to try accused for violation of state penal statute; Manner v. County Court, 58 W. Va. 660, 52 S. E. 779, construing Code 1899, c. 114, § 2, authorizing circuit and county courts to adjourn from day to day till business concluded, or till end of term.

6 Wheat. 453-475, 5 L. 303, HUGHES v. BLAKE.

Syl. 1 (II, 90). Equity—Evidence to overcome denial.

Approved in Johnson v. Georgia Loan etc. Co., 141 Fed. 597, bona fide purchaser must allege and prove want of notice and actual payment of purchase price independently of recitals in deed.

Syl. 2 (II, 91). Replication admits sufficiency of plea.

Approved in Glucose etc. Co. v. Douglass & Co., 145 Fed. 951, in suit for infringement of patent, plea setting up single defense of noninfringement is not good plea; Mutual Life Ins. Co. v. Blair, 130 Fed. 973, where insured died after commencement of suit to cancel policy for fraud, but before answer, whereupon action on policy was brought, plea in bar alleging insured's death, and bringing and pendency of such action at law was not available as objection to want of equity; Barber v. National Carbon Co., 129 Fed. 377, 64 C. C. A. 40, applying principle in suit for infringement of patent.

6 Wheat. 481-514, 5 L. 311, PREVOST v. GRATZ.

Syl. 1 (II, 92). Burden to prove trust.

Approved in In re Foss, 147 Fed. 792, where husband free from debt paid consideration for real estate which was conveyed to wife, burden is on one seeking to establish resulting trust in husband to overcome presumption that voluntary settlement on wife was in-

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tended; Windmuller v. Clarkson, 2 Alaska, 300, applying rule to grubstake contract; Copper River Min. Co. v. McClellan, 2 Alaska, 144, 145, applying rule in suit to establish trust in mining claim; Cascaden v. Dunbar, 2 Alaska, 413, arguendo.

Syl. 3 (II, 92). Lapse of time—Trusts—Concealed fraud.

Approved in Patterson v. Hewitt, 11 N. M. 42, 66 Pac. 565, 55 L. R. A. 658, applying rule to verbal trust; Sunter v. Sunter, 190 Mass. 456, 77 N. E. 498, suit by wards to avoid sale of lands by guardian indirectly to himself not barred as stale claim though not brought within limitation fixed by Rev. Laws, c. 202, § 24, they having brought it soon after ascertaining fraud.

6 Wheat. 528-541, 5 L. 322, BRASHIER v. GRATZ.

Syl. 3 (II, 97). Specific performance—Laches.

Approved in Boldt v. Early, 33 Ind. App. 442, 104 Am. St. Rep. 255, 70 N. E. 274, following rule.

6 Wheat. 550-565, 5 L. 328, KERR v. WATTS.

(II, 98.) Miscellaneous. Cited in Thompson v. Burk, 2 Alaska, 252, where defendant located placer claim, but made no discovery, and plaintiff made subsequent relocation, and thereafter, without notifying defendant of that fact, contracted with him to dig discovery shaft, in which he discovered gold, discovery inured to perfect defendant's claim; Copper River Min. Co. v. McClellan, 2 Alaska, 144, where agent locates mines for himself which he ought to locate for his principal, he is trustee for latter.

6 Wheat. 565-572, 5 L. 332, LEEDS v. MARINE INS. CO.

Syl. 1 (II, 99). Equity compels deduction of amount of setoff.

Approved in Brown v. Pegram, 149 Fed. 520, judgment debtor may enjoin its collection on allegation of setoff against beneficial owners, though setoffs are legal demands or unliquidated, and defendants are nonresidents or insolvent.

6 Wheat. 577-580, 5 L. 334, CLARK v. GRAHAM.

Syl. 1 (II, 100). Law governing realty titles.

Approved in Southern Pac. Co. v. Western Pac. Ry. Co., 144 Fed. 179, applying principle in determining title to Oakland waterfront.

6 Wheat. 580-583, 5 L. 336, PRESTON'S HEIRS v. BOWMAR.

Syl. 1 (II, 102). Boundaries—Courses and distances yield.

Approved in Davis v. Commonwealth Land etc. Co., 141 Fed. 762, 763, 764, 765, 766, 772, 774, determining boundaries where certain corners lost; Davis v. Commonwealth Land etc. Co., 141 Fed. 729, construing state patent.

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Syl. 2 (II, 103). Following state statutory construction.

Approved in Davis v. Commonwealth Land etc. Co., 141 Fed. 743, determining location of boundaries; Davis v. Commonwealth Land etc. Co., 141 Fed. 716, applying rule in action to quiet title to land under state patent; Bramblet v. Davis, 141 Fed. 784, arguendo.

6 Wheat. 593-598, 5 L. 339, GOSZLER v. GEORGETOWN.

Syl. 2 (II, 103). Power to change street grade.

Approved in Mead v. Portland, 200 U. S. 164, 50 L. 420, 26 Sup. Ct. 171, applying rule to right of successor to bridge company to change street grade; State v. Wilson, 121 Wis. 525, 99 N. W. 336, applying rule where city charter imposed on board of education duty to establish text-books.

6 Wheat. 598-605, 5 L. 840, McCLUNG v. SILLIMAN.

Syl. 1 (II, 106). No state mandamus to federal officer.

Distinguished in McDaid v. Territory, 1 Okl. 97, 98, 30 Pac. 440, upholding jurisdiction to mandamus townsite trustees to issue deed to contestant they have decided is entitled to it.

Syl. 3 (II, 108). Federal court's jurisdiction is statutory.

Approved in Ex parte Massachusetts, 197 U. S. 488, 49 L. 848, supreme court cannot grant extraordinary writs in cases in which it has neither original nor appellate jurisdiction; Mystic Milling Co. v. Chicago etc. Ry. Co., 132 Fed. 292, denying mandamus in circuit court over action which is not removable; Barber Asphalt etc. Co. v. Morris, 132 Fed. 953, 67 L. R. A. 761, 66 C. C. A. 55, granting mandamus to circuit judge to vacate order staying proceedings in circuit court till determination of proceedings in state court.

VII WHEATON.

7 Wheat. 7-13, 5 L. 382, NEWSOM v. PRYOR.

Syl. 1 (II, 110). Boundaries—Controlling calls.

Approved in Kleven v. Gunderson, 95 Minn. 254, 104 N. W. 7, following rule.

Distinguished in Security Land etc. Co. v. Burns, 193 U. S. 179, 48 L. 671, 24 Sup. Ct. 425, courses and distances as set forth in plat of official survey and referred to in patent, which shows alleged meander line of lake as one boundary, control as against actual boundary of lake, where survey was fraudulent and lake never within half mile of point indicated on plat.

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7 Wheat. 13-22, 5 L. 384, TAYLOR v. SANDIFORD.

Syl. 1 (II, 111). Penalty and liquidated damages distinguished.

Approved in Dieckerhoff v. United States, 136 Fed. 547, 69 C. C. A. 255, penalty of bond given under Rev. St. 2899, is not liquidated damages; State v. Warner, 197 Mo. 659, 94 S. W. 964, game law of 1905, requiring fines to go to game protection fund violates constitutional provision that fines and penalties shall go to county school fund; Disosway v. Edwards, 134 N. C. 256, 46 S. E. 502, in action on bond conditioned for performance of agreement not to engage in certain business it is error to enter judgment for full amount of bond, on overruling demurrer, where there were no allegations as to amount of actual damage; Kelley v. Seay, 3 Okl. 533, 41 Pac. 618, applying rule in action on bond containing penalty clause.

Syl. 2 (II, 113). Application of payments.

Approved in City of Lincoln v. Lincoln St. R. Co., 67 Neb. 492, 93 N. W. 774, following rule.

7 Wheat 38-45, 5 L. 391, EX PARTE KEARNEY.

Syl. 1 (II, 115). Habeas corpus by supreme court.

Approved in Ex parte Moran, 144 Fed. 600, denying jurisdiction of circuit court of appeals to review conviction of capital crime in Oklahoma court.

Syl. 2 (II, 116). Supreme court—Criminal appeals.

Approved in Heinze v. Butte etc. Min. Co., 129 Fed. 278, 280, 63 C. C. A. 388, order of contempt for disobeying injunction is not reviewable by writ of error; Bullock etc. Co. v. Westinghouse etc. Co., 129 Fed. 106, 63 C. C. A. 607, writ of error and not appeal is proper remedy to review order of contempt for violation of injunction; Christensen etc. Co. v. Westinghouse etc. Co., 129 Fed. 96, 63 C. C. A. 598, circuit court of appeals cannot review order in equity suit adjudging party in contempt for disobeying injunction except on appeal from final decree in that suit.

Syl. 6 (II, 118). Review in contempt.

Approved in Bessette v. W. B. Conkey Co., 194 U. S. 331, 333, 48 L. 1003, 1004, 24 Sup. Ct. 665, circuit court of appeals may review order of circuit court finding person not party to suit guilty of contempt in violating restraining order of that court.

Syl. 7 (II, 120). Habeas corpus in contempt.

Approved in In re Burkell, 2 Alaska, 110, where justice of peace added "hard labor" to penalty of confinement in jail, habeas corpus will not lie to cure error where hard labor is not in fact being imposed as part of penalty.

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7 Wheat. 46-58, 5 L. 393, BAYLEY v. GREENLEAF.

Syl. 1 (II, 120). Vendor's lien—Loss by sale.

Approved in Lindbloom v. Kidston, 2 Alaska, 297, vendor of realty who reserves no lien of record after delivery of absolute deed to vendee has no equitable lien for deferred payments of purchase money due him, which he can enforce against property in hands of subsequent mortgagor for value; Baker v. Fleming, 6 Ariz. 421, 59 Pac. 102, where land is granted by absolute conveyance, grantor has no implied equitable lien thereon for unpaid purchase money.

Syl. 5 (II, 124). Priority of vendor's lien.

Approved in United States v. Detroit etc. Co., 131 Fed. 678, purchasers in good faith of equitable title evidenced by receiver's final receipts, upon which patents subsequently issued, have complete defense as against government suit to set aside patents for fraud in procurement.

7 Wheat. 58, 59, 5 L. 397, BROWDER v. McARTHUR.

Syl. 1 (II, 124). No rehearing after remittitur.

Approved in Montana Min. Co. v. St. Louis etc. Co., 147 Fed. 903, where court of appeals affirmed judgment, but subsequently on cross-error reversed it on different point, and ordered new trial, questions therein considered will not be reconsidered on error from second judgment.

7 Wheat. 59-122, 5 L. 398, RICARD v. WILLIAMS.

Syl. 6 (II, 127). Presumption of grant where claim negatives it.

Approved in Logan v. Ward, 58 W. Va. 375, 52 S. E. 401, grant of undivided share from one joint tenant to another not presumed from mere silent possession for long time.

Syl. 11 (II, 129). Time for administrator to sell.

Approved in In re Tuohy's Estate, 33 Mont. 247, 83 Pac. 491, upholding order for executor's sale of lands to pay debts.

Syl. 12 (II, 130). Entry by one heir—Adverse possession.

See 109 Am. St. Rep. 610, note.

7 Wheat. 122-157, 5 L. 414, BOULDIN v. MASSIE'S HEIRS.

Syl. 4 (II, 132). Proof of lost instrument.

Approved in Brown v. Harkins, 131 Fed. 66, 65 C. C. A. 301, determining insufficiency of proof of record for lost record-book to justify oral evidence of its contents in suit to recover revenue taxes illegally imposed.

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7 Wheat. 158-163, 5 L. 423, WATTS v. LINDSEY'S HEIRS.

Syl. 1 (II, 132). Ejectment—Recovery on own title.

Approved in McGuire v. Blount, 199 U. S. 144, 50 L. 128, 26 Sup. Ct. 1, reaffirming rule.

7 Wheat. 283-355, 5 L. 454, THE SANTISSIMA TRINIDAD.

Syl. 5 (II, 138). Neutrality—Contraband to belligerents.

Approved in Northern Pac. Ry. Co. v. American Trading Co., 195 U. S. 465, 49 L. 281, 25 Sup. Ct. 84, nonperformance of agreement by carrier to forward through shipment by steamer of connecting carrier sailing on certain day not excused by refusal of port collector to grant clearance because freight was contraband of war.

7 Wheat. 356-452, 5 L. 472, EVANS v. EATON.

Syl. 1 (II, 139). Competency of interested witness.

Approved in dissenting opinion in Burton v. United States, 202 U. S. 393, 50 L. 1076, 26 Sup. Ct. 688, majority holding fraud order inquiry pending before postal department is proceeding in which United States is directly or indirectly interested, within Rev. St., § 1782.

7 Wheat. 522-529, 5 L. 513, CROCKET v. LEE.

(II, 142.) Miscellaneous. Cited in Ratliff v. Sommers, 55 W. Va. 37, 46 S. E. 715, as to right to amend pleadings.

7 Wheat. 530-533, 5 L. 515, MACKER v. THOMAS.

Syl. 3 (II, 144). Reversal where heirs default.

Approved in Shute v. Patterson, 147 Fed. 512, where alleged involuntary bankrupt died after filing of petition, but before service of process, heirs and personal representatives should be brought in and made parties to proceeding before adjudication.

7 Wheat. 535-551, 5 L. 516, BLIGHT'S LESSEE v. ROCHESTER.

Syl. 5 (II, 145). Lessee cannot deny landlord's title.

Approved in Wallace v. Ocean Grove etc. Assn., 148 Fed. 673, tenant who paid rent under lease up to notice terminating lease cannot deny landlord's title in ejectment, though he was in possession prior to lease; Hagar v. Wikoff, 2 Okl. 584, 588, 39 Pac. 282, 283, one going into possession of town lot on public lands as tenant of one who has erected building cannot assert adverse claim until possession surrendered.

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VIII WHEATON.

8 Wheat. 1-108, 5 L. 547, GREEN v. BIDDLE.

Syl. 3 (II, 153). Estoppel of equitable owner by silence.

Approved in Hunter v. Coe, 12 N. D. 515, 97 N. W. 872, one purchasing realty with notice of outstanding contract of sale may be compelled to convey, but purchaser will be required to pay to vendee from unpaid purchase price payments he has made to vendor.

Syl. 8 (II, 156). Statute impairing contracts.

Approved in Harrison v. Remington Paper Co., 140 Fed. 391, 392, holding void, as to existing contracts, Kansas act of 1898 substituting equity suit for existing remedy to enforce stockholder's liability; Knickerbocker Trust Co. v. Myers, 133 Fed. 768, holding void Acts Md. 1904, p. 579, c. 337, which takes away remedy given by Acts Md. 1892, p. 153, c. 109, § 851, relating to liability of stockholders; Welsh v. Cross, 146 Cal. 624, 625, 106 Am. St. Rep. 63, 81 Pac. 230, time for redemption of realty from execution sale on judgment is not affected by subsequent changing of statute extending time for redemption, before levy and sale under execution; Smith v. Jennings, 67 S. C. 336, 45 S. E. 826, joint resolution requiring state treasurer to write off the books, as state obligations, certain past due bonds, is not law impairing obligation of contracts; Investment Co. v. Hambach, 37 Wash. 633, 80 Pac. 192, upholding Sess. Laws 1903, p. 262, c. 137, allowing value of improvements made in good faith in actions for recovery of realty.

Syl. 17 (II, 161). Occupying claimant's act void.

Distinguished in Uhl v. Grissom, 12 Okl. 325, 72 Pac. 373, upholding occupying claimant's act of 1893.

8 Wheat. 174-217, 5 L. 589, HUNT v. ROUSMANIER.

Syl. 1 (II, 162). Revocation of power of attorney.

Approved in Divine v. Miller, 70 S. C. 228, 106 Am. St. Rep. 743, 49 S. E. 480, where creditor collects proceeds of collateral after death of debtor, payment of same on note of debtor does not arrest limitations. See 110 Am. St. Rep. 858, note.

Syl. 2 (II, 163). When power of attorney irrevocable.

See 110 Am. St. Rep. 857, note.

Syl. 4 (II, 164). Power coupled with interest survives.

Approved in In re E. T. Kenney Co., 136 Fed. 453, where several creditors of insolvent corporations before bankruptcy proceedings

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were instituted assigned claims to committee, latter entitled to prove all claims against estate of one of corporations in bankruptcy as one claim; Fisher v. Southern Home & Trust Co., 138 N. C. 99, 50 S. E. 595, in order that power of attorney survive death of donor, it is not enough that interest be in proceeds of thing or that it be irrevocable during life of donor; Warren v. Pine, 65 N. J. Eq. 53, 55 Atl. 73, holding stockholder could revoke voting trust created in committee for reorganization of insolvent corporation. See 110 Am. St. Rep. 859, 860, note.

Syl. 5 (II, 164). Requisites of power coupled with interest.

Approved in Scott v. Travellers' Ins. Co., 103 Md. 78, 63 Atl. 380, construing insurance agent's contract for commissions on renewals; Weaver v. Richards, 144 Mich. 413, 108 N. W. 389, power appointing attorney to sell, providing that it should be irrevocable and survive death of signers, is not power coupled with interest; State v. District Court, 30 Mont. 12, 75 Pac. 518, guardian may substitute attorney for one who represented ward prior to guardian's appointment, though fees due former attorney not paid; Hunter v. Mutual Reserve etc. Ins. Co., 184 N. Y. 145, 76 N. E. 1074, provisions in statute authorizing foreign insurance company to do business on execution of power to insurance commissioner, irrevocable while liabilities remain outstanding, does not prevent revocation as to nonresident policy-holders; Brown v. Skotland, 12 N. D. 450, 97 N. W. 545, where one made application for loan and in application appointed agent to execute note, but died before application accepted, power of attorney terminated on death. See 110 Am. St. Rep. 855, 857, 860, note.

Distinguished in Frank v. Colonial etc. Mtg. Co., 86 Miss. 116, 117, 118, 38 So. 342, 70 L. R. A. 135, power of sale vested in trustee and power of substitution of new trustee granted to beneficiary in trust are coupled with interest; dissenting opinion in Weaver v. Richards, 144 Mich. 408, 411, 108 N. W. 387, 388, majority holding power appointing attorney to sell, providing that it shall be irrevocable and survive death, is not power coupled with interest.

Syl. 6 (II, 167). Parol to vary writing.

Distinguished in North American etc. Co. v. Samuels, 146 Fed. 56, admitting parol evidence to show particular kinds and quality of goods sold and manner of sale where written contract silent with respect thereto.

Syl. 8 (II, 168). Equitable relief for mistake.

Approved in Carrell v. McMurray, 136 Fed. 669, 670, reforming deed to embody actual agreement made on exchange of farm for stock of merchandise.

Syl. 9 (II, 168). Relief against mistake of law.

Approved in Burk v. Johnson, 146 Fed. 214, where bill to rescind contract for promotion of burial associations under copyrighted by-

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laws was based on alleged fraudulent representations, bill could not be sustained by proof of mutual mistake.

8 Wheat. 229-252, 5 L. 603, SEXTON v. WHEATON.

Syl. 4 (II, 174). Fraudulent conveyance set aside.

Approved in McDonald v. Dewey, 202 U. S. 529, 50 L. 1136, 26 Sup. Ct. 731, one who with knowledge of insolvency of national bank transfers stock to irresponsible vendee with intent to evade liability for debts of bank is liable only for unsatisfied debts existing when fraudulent transfer made.

Syl. 5 (II, 176). Voluntary settlement on wife—Impeachment.

Approved in Savage v. Savage, 141 Fed. 350, following rule.

8 Wheat. 268-293, 5 L. 614, SPRING v. SOUTH CAROLINA INS. CO.

Syl. 5 (II, 180). Lien on policy of premiums.

Approved in Wilder v. Watts, 138 Fed. 432, where alleged bankrupt before insolvency arranged to borrow money to purchase goods under agreement that he would have goods insured and assign policies to lenders as collateral security, and loans were made to him, agreement was valid equitable assignment, though policies not delivered when issued; Beasley v. Coggins, 48 Fla. 222, 37 So. 215, upholding bill by trustee to set aside voluntary fraudulent conveyance by bankrupt to wife while insolvent, with intent to delay and defraud prior and subsequent creditors, though recorded day following execution.

(II, 179.) Miscellaneous. Cited in Union Trust Co. v. Bulkeley, 150 Fed. 514, assignment of accounts good in equity, though manual possession not given.

8 Wheat. 326-337, 5 L. 628, NICHOLLS v. WEBB.

Syl. 2 (II, 183). Notes—Notarial protest as evidence.

Approved in Schofield v. Palmer, 134 Fed. 755, arguendo.

Syl. 3 (II, 183). Rules of evidence expand.

Approved in Brown v. United States, 142 Fed. 6, on issue as to insolvency of debtor of bank, books of bank are admissible as prima facie evidence of amount of corporation's indebtedness to it.

Syl. 7 (II, 184). Decedent's memoranda as evidence.

Approved in Rosenthal v. McGraw, 138 Fed. 725, testimony of witness as to indebtedness based upon examination of charges made in books of account which were not made by him and are in no manner authenticated, is hearsay; Denver v. Cochran, 17 Colo. App. 74, 67 Pac. 24, in action against city for injury resulting from defective sidewalk, letter written by chief inspector of public works in line of his duty showing actual knowledge of defects is admissible after his death to show knowledge on part of city; Haas v. Chubb, 67 Kan. 790, 74 Pac. 230, press copies of waybills issued by railroad, originals

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of which are not shown to be incapable of production, are inadmissible where person issuing bills and making copies not shown to be dead; Collins v. German American etc. Assn., 112 Mo. App. 219, 86 S. W. 894, admitting baptismal church records kept by clergymen of parish from time immemorial, without proof of handwriting of entries.

8 Wheat. 338-365, 5 L. 631, FLECKNER v. BANK OF THE UNITED STATES.

Syl. 1 (II, 185). Usurious note void in all hands.

Distinguished in Weed v. Gainesville etc. R. R. Co., 119 Ga. 590, 46 S. E. 893, defense of usury is not good as against bona fide purchaser of corporate bonds for value without notice and before maturity.

Syl. 2 (II, 185). Banks may discount notes.

Approved in Morris v. Third Nat. Bank, 142 Fed. 31, national banks may purchase notes at less than face value; dissenting opinion in First Nat. Bank v. Converse, 200 U. S. 442, 50 L. 544, 26 Sup. Ct. 306, majority holding national bank cannot take stock in corporation formed to engage in business of buying and selling stocks.

Syl. 6 (II, 187). Collateral attack on ultra vires acts.

Approved in Brigham v. Peter Bent Brigham Hospital, 134 Fed. 527, 67 C. C. A. 393, where state, by special act, has authorized creation of particular corporation with enlarged capacity to enable it to accept certain gift, power of corporation cannot be questioned.

(II, 185.) Miscellaneous. Cited in Roblee v. Union Stock Yards Nat. Bank, 69 Neb. 186, 95 N. W. 63, note otherwise negotiable is not rendered non-negotiable by provision for collateral security.

8 Wheat. 421-463, 5 L. 651, WORMLEY v. WORMLEY.

Syl. 4 (II, 195). Effect of notice to purchaser of trust property.

Approved in Safe Deposit etc. Co. v. Cahn, 102 Md. 550, 62 Atl. 827, purchaser at private sale of corporate stock belonging to trust estate with knowledge of order of court directing sale of stock at highest market price obtainable on stock board, holds it subject to same trust to which it was subject in hands of original trustee.

Syl. 5 (II, 196). Requisites of bona fide purchaser.

Approved in Johnson v. Georgia Loan etc. Co., 141 Fed. 597, bona fide purchaser must allege and prove want of notice and actual payment of purchase money, independently of recitals in deed.

Syl. 7 (II, 197). Supreme court—Formal parties.

Approved in Cella v. Brown, 136 Fed. 442, where, in suit to avoid contract to reorganize certain railroads and for specific performance of contract to convey share of pledged securities of roads, it was not alleged that railroads had done anything in violation of contract,

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railroads not indispensable parties; Boatmen's Bank v. Fritzlen, 135 Fed. 658, 68 C. C. A. 288, holder of prior mortgage is not necessary party to foreclosure of junior mortgage; Groel v. United Elec. Co., 132 Fed. 254, in suit by stockholder on right of action in corporation, corporation is indispensable party, and, for purposes of federal jurisdiction, will be aligned with defendants when officers are opposed to complainant's action.

(II, 194.) Miscellaneous. Cited in Swiger v. Swiger, 58 W. Va. 130, 52 S. E. 28, where husband conveys land directly to wife he cannot convey to another legal title which remains in him in trust, or encumber same.

8 Wheat. 543-605, 5 L. 681, JOHNSON v. McINTOSH.

Syl. 2 (II, 209). Indian occupancy of lands.

Approved in Morris v. Bean, 146 Fed. 432, determining riparian rights in Crow Indian Reservation; Labadie v. United States, 6 Okl. 414, 51 Pac. 670, act of 1888, punishing cutting timber on Indian reservation applies to Indian who cuts timber for speculative purposes.

8 Wheat. 697, 698, HUGH v. HIGGS.

Syl. 1 (II, 211). Decretal order not actionable.

Approved in Israel v. Israel, 148 Fed. 578, decree for alimony and costs supports action in another state for sum due at time of rendition and which is absolutely awarded, but not for future payments.

8 Wheat. 699, 700, 5 L. 719, GRAIN v. PALMER.

Syl. 2 (II, 211). Appearance waives objection to venue.

Approved in Iowa etc. Min. Co. v. Bliss, 144 Fed. 449, following rule; dissenting opinion in Fisher v. Crowley, 57 W. Va. 329, 50 S. E. 429, majority holding defendant appearing in court of record to quash summons does not waive defective jurisdiction by failing to recite that appearance is only to object to jurisdiction.

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IX WHEATON.

9 Wheat. 1-240, 6 L. 23, GIBBONS v. OGDEN.

Syl. 1 (II, 213). Congressional power over commerce.

Approved in McCray v. United States, 195 U. S. 55, 56, 49 L. 95, 96, 24 Sup. Ct. 769, upholding oleomargarine act of 1902; Howard v. Illinois C. R. Co., 148 Fed. 999, holding void federal employers' liability act of 1906; J. Rosenbaum Grain Co. v. Chicago etc. Ry. Co., 130 Fed. 48, state railroad commission cannot require railroad to abolish proportional tariffs which apply only to interstate shipments and were adopted with approval of Interstate Commerce Commission.

Syl. 2 (II, 216). Commerce defined.

Approved in Brooks v. Southern Pac. Co., 148 Fed. 991, holding void federal employers' liability act of 1906; United States v. Scott, 148 Fed. 434, holding void federal act of 1898, prohibiting interstate carriers from discriminating against union labor; dissenting opinion in Western Union Tel. Co. v. Hughes, 104 Va. 244, 51 S. E. 226, where points of transmission and destination of telegram sent over lines of single company were within same state, fact that part of transmission was made in another state does not make it interstate business.

Syl. 4 (II, 220). What commerce comprehends.

Approved in United States v. Wishkah Boom Co., 136 Fed. 47, 48, 68 C. C. A. 592, construing 26 Stat. 454, prohibiting maintenance of obstructions in navigable streams; Gulf etc. Ry. Co. v. State, 32 Tex. Civ. 5, 73 S. W. 432, determining that shipment from Dakota to Texarkana, where it was transshipped to new purchaser within state, was intrastate; dissenting opinion in Northern Securities Co. v. United States, 193 U. S. 379, 48 L. 717, 24 Sup. Ct. 436, majority upholding enforcement of anti-trust act by federal decree enjoining corporation organized in pursuance of combination of stockholders in competing interstate railroads from exercising power acquired by corporation through acquisition of stock.

Syl. 6 (II, 223). No limitations on commerce regulation.

Approved in Northern Securities Co. v. United States, 193 U. S. 335, 341, 368, 369, 376, 48 L. 699, 702, 713, 716, 24 Sup. Ct. 436, upholding enforcement of anti-trust act by federal decree enjoining corporation organized in pursuance of combination of stockholders in competing interstate railroad from exercising power acquired by corporation through acquisition of stock.

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Syl. 7 (II, 224). Commerce regulation includes navigation.

Approved in United States v. Union Bridge Co., 143 Fed. 386, 391, upholding 30 Stat. 1153, requiring alteration of bridges over navigable waters on determination of Secretary of War.

Syl. 8 (II, 225). Commerce—State inspection laws.

Approved in Ames v. Kirby, 71 N. J. L. 445, 59 Atl. 559, anti-poolselling act of 1898 is violated by making wagers by telegraph with persons outside state, though latter be not violating own local laws in accepting bets; Territory v. Denver etc. R. R. Co., 12 N. M. 433, 78 Pac. 76, upholding hide inspection act of 1901; Hagan v. City of Richmond, 104 Va. 732, 3 L. R. A. (N. S.) 1120, 52 S. E. 389, construing 30 Stat. 1154, § 19, relating to removal of obstructions in navigable waters by Secretary of War.

Syl. 19 (II, 230). Constitutional construction.

Approved in South Carolina v. United States, 199 U. S. 449, 50 L. 265, 26 Sup. Ct. 110, United States may exact internal revenue tax from dispensing agents of state which has taken charge of liquor business; Gemmer v. State, 163 Ind. 160, 71 N. E. 482, 66 L. R. A. 82, holding void, under Const., art. 6, § 2, Acts of 1903, p. 24, c. 13, postponing election of successors to enumerated officers; Ex parte Anderson, 46 Tex. Cr. 380, 81 S. W. 976, city court has no jurisdiction to try accused for alleged violation of state penal statute.

Syl. 21 (II, 233). Limit of state powers.

Approved in Chicago etc. Ry. Co. v. Illinois, 200 U. S. 584, 50 L. 606, 26 Sup. Ct. 341, upholding Illinois farm drainage act of 1885; Jacobson v. Massachusetts, 197 U. S. 25, 49 L. 649, 25 Sup. Ct. 358, upholding Massachusetts compulsory vaccination act; Crescent Liquor Co. v. Platt, 148 Fed. 898, holding void, as to interstate shipments, W. Va. Act 1903, p. 130, regulating shipment and sale of liquor and providing that agent of carrier delivering liquor to one not having license or who has not ordered it for own use, deemed to be seller contrary to law; State v. Durein, 70 Kan. 24, 80 Pac. 990, upholding statutes regulating liquor traffic; dissenting opinion in Lochner v. New York, 198 U. S. 73, 49 L. 948, 25 Sup. Ct. 539, majority holding void N. Y. Laws 1897, c. 415, art. 8, § 110, limiting hours of employment in bakeries. See 103 Am. St. Rep. 868, note.

Syl. 22 (II, 239). Exercise of reserved congressional powers.

Approved in Jacobson v. Massachusetts, 197 U. S. 25, 49 L. 649, 25 Sup. Ct. 358, upholding Massachusetts compulsory vaccination act; Dobbins v. Los Angeles, 195 U. S. 237, 49 L. 175, 25 Sup. Ct. 18, holding void municipal ordinance narrowing limits within which gasworks may be maintained, so as to include property purchased for that purpose; Northern Securities Co. v. United States, 193 U. S. 348, 48 L. 704, 24 Sup. Ct. 436, upholding enforcement of anti-trust act by federal decree enjoining corporation organized in pursuance of

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combination of stockholders in competing interstate railroads from exercising power acquired by corporation through acquisition of stock; Allen v. Reed, 10 Okl. 123, 60 Pac. 788, holding void act of 1893, relating to change of county seats as conflicting with act of Congress; dissenting opinion in Pabst Brewing Co. v. Crenshaw, 198 U. S. 39, 49 L. 934, 25 Sup. Ct. 552, majority upholding state statute imposing inspection fee on malt liquors imported into state, as being enacted within powers granted by 26 Stat. 313. See 103 Am. St. Rep. 869, note.

9 Wheat. 241-325, 6 L. 81, KIRK v. SMITH.

Syl. 2 (II, 245). Title by permissive possession.

Distinguished in Fountain v. Lewiston Nat. Bank, 11 Idaho, 467, 83 Pac. 509, where person owing bank principal and interest on overdue mortgage gave deed of premises to bank and took option contract to repurchase, possession of bank was adverse.

9 Wheat. 325-353, 6 L. 101, TAYLOR v. MASON.

(II, 246.) Miscellaneous. Cited in Virginia etc. Wheel Co. v. Harris, 103 Va. 714, 49 S. E. 993, construing averment that master promised to repair machinery but failed and "refused" to do so.

9 Wheat. 409-420, 6 L. 122, THE ST. JAGO DE CUBA.

Syl. 2 (II, 254). Maritime liens—Priority to creditors.

Approved in The Alcalde, 132 Fed. 578, refusing lien to bank which cashed master's drafts to pay crew, where master drew drafts after receiver appointed for vessel, though bank ignorant of receivership.

Syl. 9 (II, 258). Hypothecation of vessel at home.

Approved in The Surprise, 129 Fed. 875, 876, 64 C. C. A. 309, where food supplies ordered by master while in foreign port, owner need not be consulted; The New Brunswick, 129 Fed. 896, 64 C. C. A. 325, lien for supplies furnished sea-going vessel owned in another state cannot be maintained, though enrolled at port where supplies furnished, where person furnishing supplies not misled into believing she was domestic vessel.

9 Wheat. 483-488, 6 L. 140, RIGGS v. TAYLOE.

Syl. 1 (II, 262). Secondary evidence of lost instrument.

Approved in Brown v. Harkins, 131 Fed. 66, 65 C. C. A. 301, in action by distiller to recover revenue taxes illegally imposed, evidence of loss of record-book held insufficient to justify admission of oral evidence of contents.

9 Wheat. 489-501, 6 L. 142, HUGHES v. EDWARDS.

Syl. 4 (II, 265). Deed absolute as mortgage.

Approved in Weiseham v. Hocker, 7 Okl. 253, 54 Pac. 465, where deed absolute given in security for debt, and grantee at same time

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executed agreement to reconvey on payment of debt secured, it is mortgage.

Syl. 7 (II, 268). Presumption of discharge of mortgage.

Approved in Woodlief v. Wester, 136 N. C. 166, 48 S. E. 579, mortgagee may foreclose by action brought within four months after death of life tenant, though last payment on mortgage debt made more than ten years prior to date of suit.

Syl. 8 (II, 269). Mortgages—Recordation as notice.

Approved in Lefmann v. Brill, 142 Fed. 48, wife who recovered decree against husband in maintenance suit which awarded her specific property, including realty which husband had previously mortgaged, cannot avoid mortgage as fraudulent conveyance.

9 Wheat. 502-515, 6 L. 145, STEPHENS v. McCARGO.

Syl. 1 (II, 272). Pleading—Assertion of several titles.

Approved in Westinghouse Air Brake Co. v. Kansas City S. Ry. Co., 137 Fed. 32, union of cause of action upon mechanic's lien and cause of action upon equitable preference in bill to enforce same demand against same property does not render pleading multifarious.

9 Wheat. 515-525, 6 L. 149, LOVE v. SIMMS.

Syl. 1 (II, 272). Ejectment—Possession in plaintiff.

Approved in McGuire v. Blount, 199 U. S. 144, 50 L. 128, 26 Sup. Ct. 1, arguendo.

9 Wheat. 527, 528, 6 L. 151, PEYTON v. ROBERTSON.

Syl. 1 (II, 272). Replevin—Amount in controversy.

Approved in Graves v. Thompson, 35 Wash. 285, 77 Pac. 385, in action for recovery of personal property, alleged damages for detention thereof cannot be added to value of property for purpose of determining appellate jurisdiction.

9 Wheat. 532-537, 6 L. 152, SMITH v. McIVER.

Syl. 1 (II, 275). Fraud tried at law bars equity.

Approved in Levin v. Northwestern Nat. Ins. Co., 146 Fed. 77, in action at law in federal court on insurance policy, award of arbitrators, fixing amount of plaintiff's loss made in accordance with provisions of policy and pleaded by defendant, cannot be impeached for fraud.

9 Wheat. 537-540, 6 L. 154, MOLLAN v. TORRANCE.

Syl. 1 (II, 279). Federal jurisdiction not devestable.

Approved in Mutual Life Ins. Co. v. Blair, 130 Fed. 975, where equity obtained jurisdiction of persons and subject matter of suit to cancel insurance policy for fraud prior to insurer's death, fact

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that insured died before answer and that action at law immediately brought on policy does not deprive equity court of jurisdiction.

Syl. 3 (II, 281). Federal courts—Action by indorsee.

Approved in Kolze v. Hoadley, 200 U. S. 83, 50 L. 381, 26 Sup. Ct. 220, applying rule to suit to foreclose trust deed, where bill also prayed cancellation of release to grantor for fraud; Utah-Nevada Co. v. De Lamar, 133 Fed. 121, 122, 66 C. C. A. 179, applying rule to suit by assignee of oral contract to recover money due thereon.

9 Wheat. 553-555, 6 L. 158, CATLETT v. BRODIE.

Syl. 1 (II, 283). Bond intended as supersedeas.

Distinguished in Cook v. Smith, 67 Kan. 55, 72 Pac. 525, in action on bond conditioned for payment of damages occasioned by stay of money judgment allegation that debtor insolvent when judgment rendered no basis for substantial damages.

9 Wheat. 565-573, 6 L. 161, KERR v. MOON.

Syl. 1 (II, 287). Law governing land transfers.

Approved in Kane v. Luckman, 131 Fed. 617, applying rule to contract for sale of cows in exchange for farm; Succession of Hasling, 114 La. 295, 38 So. 174, validity of will made in Louisiana by citizen thereof devising realty in Mississippi is governed by laws of latter.

Syl. 2 (II, 288). Suit by foreign administrator.

Approved in Moore v. Petty, 135 Fed. 673, 68 C. C. A. 306, executor may sue in another state to recover from his agents proceeds of sale of realty belonging to decedent's estate. See 113 Am. St. Rep. 213, note.

9 Wheat. 579-581, 6 L. 165, UNITED STATES v. PEREZ.

Syl. 1 (II, 291). Discretion to discharge jury.

Approved in State v. Keerl, 33 Mont. 511, 513, 517, 85 Pac. 863, 864, 866, discharge of jury for failure to agree is not once in jeopardy; dissenting opinion in Kepner v. United States, 195 U. S. 135, 49 L. 126, 24 Sup. Ct. 797, majority cannot appeal from acquittal in court of first instance in Philippines.

9 Wheat. 581-598, 6 L. 166, RENNER v. BANK OF COLUMBIA.

Syl. 7 (II, 296). Parol to vary writing.

Approved in Cudahy etc. Co. v. State Nat. Bank, 134 Fed. 545, 67 C. C. A. 662, provision for payment of attorney's fees in case note is not paid at maturity does not destroy negotiability of note otherwise negotiable; Lillard v. Kentucky Dist. etc. Co., 134 Fed. 174, 67 C. C. A. 74, where contract was to deliver distillery slop at cattle feeding lot supplied by distiller, evidence of custom that lot be

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supplied by distillery with suitable pens equipped with pipes and troughs is admissible.

Syl. 13 (II, 301). Secondary evidence of lost document.

Approved in Brown v. Harkins, 131 Fed. 66, 65 C. C. A. 301, refusing secondary evidence of contents of record-book in action by distiller to recover revenue tax wrongfully imposed.

9 Wheat. 616-649, 6 L. 174, THE MONTE ALLEGRE.

Syl. 4 (II, 307). No warranty in judicial sales.

Approved in English v. Otis, 125 Iowa, 560, 101 N. W. 295, purchasers of property at execution sale are not purchasers in good faith within Code, § 3797.

9 Wheat. 651-658, 6 L. 182, WALTON v. UNITED STATES.

Syl. 7 (II, 309). Mode of taking and noting exceptions.

Approved in Montana Min. Co. v. St. Louis etc. Co., 147 Fed. 908, where judge, after instructing jury but before sending them out, retired to chambers with counsel and there heard and allowed exceptions, he need not afterward allow further exceptions; Lengelsen v. McGregor, 162 Ind. 268, 70 N. E. 249, bill of exceptions not signed until after term nor within time fixed by court, not considered on appeal, though failure to sign in time due to judge's absence.

Distinguished in Tracy v. Carver Coal Co., 57 W. Va. 593, 50 S. E. 827, where skeleton bill of exceptions does not refer to evidence as transcribed, such evidence cannot be certified and identified thirty days after adjournment.

9 Wheat. 680-719, 6 L. 189, MILLER v. STEWART.

Syl. 1 (II, 314). Surety's liability—Extension by implication.

Approved in Zeigler v. Hallahan, 131 Fed. 209, 66 C. C. A. 1, where defendant guaranteed lease and before tenant took possession contract modified without surety's knowledge by insertion of provision that in event of destruction of premises lease should be void, there was material alteration; National Surety Co. v. United States, 129 Fed. 72, 63 C. C. A. 512, bond of letter-carrier for discharge of duties imposed by postal laws or rules of postoffice department makes surety liable for theft of registered package by carrier where duty of registering was imposed after execution of bond; Orleans etc. Ry. Co. v. International Const. Co., 113 La. 413, 37 So. 11, surety on railroad construction contract released by change in principal contract with his consent; City of Butte v. Cook, 29 Mont. 94, 74 Pac. 69, where names of two sureties appear in body of bond, which is signed by one only, there is notice to obligee sufficient to permit defense by surety signing that liability conditioned on both signing; Lowe v. City of Guthrie, 4 Okl. 300, 44 Pac. 202, sureties on city clerk's bond not liable for payment of liquor licenses to him, where law requires

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payment to city treasurer; Griffith v. Newell, 69 S. C. 304, 48 S. E. 260, surety not bound by action of principal in waiving condition in contract; Stern v. Sawyer, 78 Vt. 11, 12, 112 Am. St. Rep. 894, 61 Atl. 38, where, pending term of lease, lessor sold portion of property with lessee's consent but without consent of lessee's sureties, sureties discharged.

Distinguished in Segari v. Mazzei, 116 La. 1030, 41 So. 247, mere change in site of dwelling to be constructed from one place to another in same square does not discharge surety of contractor.

Syl. 2 (II, 322). Surety's contract strictly construed.

Approved in United States v. Kauhoe, 147 Fed. 186, where defendants liable on postmaster's bond requested and received extension of time from inspector, who granted it on condition that they execute note for amount to United States, note was unauthorized and void; Manatee County etc. Bank v. Weatherly, 144 Ala. 658, 39 So. 988, where guaranty for payment of oranges was conditioned that bill of lading be certified that oranges sound when loaded and shipped, guarantor not liable on certificate that oranges sound when loaded; Ida County Sav. Bank v. Seidensticker, 128 Iowa, 58, 102 N. W. 822, bond given by bank cashier during first year of election not binding on sureties for defalcations subsequent to first year, where he was elected annually.

9 Wheat. 720-738, 6 L. 199, UNITED STATES v. KIRKPATRICK.

Syl. 4 (II, 327). Laches not imputed to government.

Approved in American Bonding Co. v. Spokane Building etc. Co., 130 Fed. 740, 65 C. C. A. 121, where application for fidelity insurance by building and loan society stated that secretary derived authority from board of trustees, knowledge on part of president that secretary was indebted to society at time policy issued is not imputable to society without proof of knowledge by board, so as to constitute breach of warranty that secretary was not indebted; Christie Street Com. Co. v. United States, 129 Fed. 509, statements made by departmental officers to claimant for tax alleged to have been paid under duress, to effect that claim had been certified favorably, do not estop government, so as to avoid operation of limitations; Smith v. United States, 5 Ariz. 64, 65, 45 Pac. 343, 344, applying rule in action on bond of receiver of land district; Silver v. Indiana State Board, 35 Ind. App. 462, 72 N. E. 838, applying rule in action against school board on contract for school books; Lake Co. v. Neilon, 44 Or. 20, 74 Pac. 214, failure of tax collector to turn over collections to treasurer every thirty days as required by law, not presumptive of conversion. See 101 Am. St. Rep. 149, 152, note.

Syl. 5 (II, 333). Application of payments by debtor.

Distinguished in First Nat. Bank v. National Surety Co., 130 Fed. 405, 66 L. R. A. 777, 64 C. C. A. 601, where surety company gave

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bank bond against loss by dishonest employees for one year, and bookkeeper falsely increased depositor's balance, so that he overdrew, where before bookkeeper's employment deposits exceeded checks, surety not liable.

9 Wheat. 738-903, 6 L. 204, OSBORN v. THE UNITED STATES BANK.

Syl. 5 (II, 340). Federal jurisdiction—Case defined.

Approved in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 246, 49 L. 465, 25 Sup. Ct. 251, proceeding for taking land by eminent domain authorized by Ky. St., §§ 835-839, is, when requisite diversity of citizenship exists, removable to federal court; Low Foon Yin v. United States etc. Commr., 145 Fed. 796, proceeding for deportation of Chinese laborer not having certificate is not criminal proceeding, and government may swear such Chinese as witness against himself.

Syl. 7 (II, 342). Federal question.

Approved in Carroll v. Greenwich Ins. Co., 199 U. S. 409, 50 L. 249, 26 Sup. Ct. 66, upholding Iowa Code 1897, § 1754, prohibiting combinations among insurance companies as to rates, commissions or manner of doing business.

Syl. 9 (II, 344). Suit against state.

Approved in Miocene Ditch Co. v. Moore, 150 Fed. 493, upholding right to vacate decree during term; Burke v. Snively, 208 Ill. 337, 70 N. E. 329, upholding suit to restrain canal commissioners from applying sum appropriated to maintenance of canal, as not suit against state; Sanders v. Saxton, 182 N. Y. 479, 481, 108 Am. St. Rep. 826, 75 N. E. 529, 530, in action against land commissioner and comptroller to set aside tax deed to state, state is necessary party, and action cannot be maintained; Cincinnati Board of Education v. Volk, 72 Ohio St. 486, 74 N. E. 650, board of education not liable in tort in its corporate capacity. See notes, 108 Am. St. Rep. 834; 101 Am. St. Rep. 164.

Syl. 10 (II, 348). Judicial power affects will of legislature.

Approved in Johnson v. Trustees of Hampton Inst., 105 Va. 323, 54 S. E. 32, bill does not lie to enjoin county treasurer and commissioner to enjoin collection of taxes assessed.

Syl. 12 (II, 350). Suit against foreign sovereign.

See 108 Am. St. Rep. 832, note.

Syl. 13 (II, 351). Injunction against transfers.

Approved in Currie v. Jones, 138 N. C. 190, 50 S. E. 561, upholding restraining order to prevent disposal of corporate shares in action to recover them; In re Seim, 111 La. 559, 35 So. 746, arguendo.

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Syl. 14 (II, 352). Decree against state officer.

See 108 Am. St. Rep. 831, note.

Syl. 15 (II, 352). Void statute no protection.

Approved in Board of Education etc. v. Territory Okl., 12 Okl. 297, 70 Pac. 796, enjoining commissioners for location of normal school from misappropriating public moneys.

Syl. 16 (II, 353). Injunction against state officer.

Approved in Southern Ry. Co. v. Greensboro Ice & Coal Co., 134 Fed. 93, upholding federal jurisdiction over suit to enjoin state corporation commission from enforcing order alleged to interfere with interstate commerce. See 108 Am. St. Rep. 838, note.

Syl. 21 (II, 359). State tax on federal agencies.

Approved in dissenting opinion in South Carolina v. United States, 199 U. S. 452, 466, 50 L. 266, 271, 26 Sup. Ct. 110, United States may exact revenue license from dispensing agent of state which has taken charge of liquor business.

Syl. 23 (II, 363). Plaintiffs' right to sue.

Approved in Filhiol v. Torney, 194 U. S. 360, 48 L. 1017, 24 Sup. Ct. 698, averments in complaint in ejectment that defendant's possession rests upon infraction by United States of treaty, and upon a taking of private property without compensation, do not give circuit court jurisdiction where averments respecting plaintiff's title do not show case within federal jurisdiction.

Syl. 25 (II, 364). Attorney's appearance presumes authority.

Approved in Hatfield v. King, 131 Fed. 794, applying rule in contempt proceeding against attorneys who colluded in representing parties in feigned suit.

9 Wheat. 904-914, 6 L. 244, BANK OF UNITED STATES v. PLANTERS' BANK.

Syl. 4 (II, 368). Government becoming partner.

See notes, 101 Am. St. Rep. 183; 101 Am. St. Rep. 164.

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X WHEATON.

10 Wheat. 1-50, 6 L. 253, WAYMAN v. SOUTHARD.

Syl. 3 (II, 372). Jurisdiction continues till satisfaction.

Approved in Security Trust Co. v. Union Trust Co., 134 Fed. 302, Rev. St., § 720, prohibiting restraining of state court proceedings, prohibits restraint of execution sale.

Syl. 4 (II, 373). Following state practice.

Approved in Holden v. Stratton, 198 U. S. 214, 49 L. 1022, 25 Sup. Ct. 656, exemption of life insurance policies under bankrupt act of 1898, § 6, where they are exempted by state law, is not qualified by § 70a.

Syl. 5 (II, 377). State laws rules of decisions.

Approved in Importers' etc. Bank v. Lyons, 134 Fed. 512, under rule of circuit court for eastern district of Pennsylvania on rule to show cause, testimony may be taken by deposition.

Syl. 9 (II, 379). State mitimus law in civil cases.

Approved in King v. Davis, 137 Fed. 239, 241, Va. Code, 1887, § 3566, providing that no lis pendens binds bona fide purchaser, unless memorandum filed in office of clerk of court where land lies, does not apply to federal courts.

Syl. 10 (II, 380). Delegation of powers.

Approved in United States v. Matthews, 146 Fed. 307, holding void 30 Stat. 34, making it criminal to violate rules thereafter made by Secretary of Interior for protection of forest reservations; King v. Concordia Fire Ins. Co., 140 Mich. 268, 103 N. W. 620, holding void Comp. Laws 1897, §§ 5170-5179, empowering commission to draft standard form of policy, with power to alter it, and to fix time when use of policy should become obligatory.

Syl. 11 (II, 382). Law governing contracts.

Approved in Home Land etc. Co. v. McNamara, 145 Fed. 19, contract made in Illinois for purchase of cattle then in Montana, to be there delivered, is governed, as to damages for its breach, by law of Montana; Midland etc. Co. v. Solomon, 71 Kan. 187, 79 Pac. 1078, bond and mortgage on land here, governed by its terms by Colorado laws, is enforceable here, though interest would be higher than allowed by local laws.

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10 Wheat. 51-66, 6 L. 264, UNITED STATES BANK v. HALSTEAD.

Syl. 2 (II, 383). State practice in federal court.

Approved in King v. Davis, 137 Fed. 241, Va. Code, § 3566, providing that no lis pendens binds bona fide purchaser of realty unless memorandum filed in office of clerk of court in county where land lies does not apply to federal courts.

10 Wheat. 66-133, 6 L. 268, THE ANTELOPE.

Syl. 5 (II, 390). Execution of foreign penal laws.

Approved in Schick v. United States, 195 U. S. 76, 49 L. 105, 24 Sup. Ct. 826, State v. Warner, 197 Mo. 658, 94 S. W. 964, and Casey v. St. Louis Transit Co., 116 Mo. App. 268, 91 S. W. 431, all arguendo.

10 Wheat. 146-152, 6 L. 287, THOMAS v. HARVEY'S HEIRS.

Syl. 1 (II, 392). Equity—Time to file bill of review.

Approved in In re Holmes, 142 Fed. 394, time within which petition for revision in matter of law under Bankrupt Act, § 24b, of appealable order, is limited by time fixed by bankruptcy law for appeal; Jorgensen v. Young, 136 Fed. 381, 69 C. C. A. 222, bill of review in court of equity not filed until two years after entry of judgment in original suit entered, and until after time for appeal had expired, is too late; Watkinson v. Watkinson, 68 N. J. Eq. 641, 642, 60 Atl. 935, bill of review cannot be filed after lapse of three years from final decree.

10 Wheat. 152-181, 6 L. 289, ELMENDORF v. TAYLOR.

Syl. 1 (II, 395). Following state statutory construction.

Approved in York v. Washburn, 129 Fed. 567, 64 C. C. A. 132, applying rule in determining invalidity of lease of realty under state statute of frauds; Alaska Commercial Co. v. Debney, 2 Alaska, 325, arguendo.

10 Wheat. 192-204, 6 L. 300, McCORMICK v. SULLIVAN.

Syl. 1 (II, 408). Federal jurisdiction must appear.

Approved in Riverdale Cotton Mills v. Alabama etc. Mfg. Co., 198 U. S. 197, 49 L. 1016, 25 Sup. Ct. 629, federal court, which has decreed foreclosure in suit in which diverse citizenship was admitted and property described as lying in state, may by ancillary suit restrain attack on purchaser's title under decree, by state suit brought by party to original suit, which proceeds on theory that by reason of own untruthful admission of citizenship, federal court assumed jurisdiction; Edelstein v. United States, 149 Fed. 638, judgments of bankruptcy court import absolute verity unless reversed; Ridge v. Manker, 132 Fed. 602, 67 C. C. A. 596, decree against receiver of another court is not nullity which may be collaterally attacked merely because record does not affirmatively show leave to sue; Ross-Lewin v. Goold, 211 Ill. 387, 71 N. E. 1029, where bankruptcy petition attempted to

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charge proper residence of petitioner in district, and court adjudged him bankrupt, it is presumed on collateral attack that court heard evidence as to residence; Cobe v. Ricketts, 111 Mo. App. 113, 85 S. W. 133, where after suit to dissolve loan association in federal court, state court attempted to transfer jurisdiction in previous similar suit to federal court, which rendered decree of sale of assets, which was never reversed, decree not collaterally assailable by association's debtor in suit by purchaser of assets.

Syl. 3 (II, 412). Law governing land sales.

Approved in Southern Pac. Co. v. Western Pac. Ry. Co., 144 Fed. 179, construing Oakland waterfront grant; Kane v. Luckman, 131 Fed. 618, applying rule in suit for specific performance of contract to exchange cows for land; Succession of Hasling, 114 La. 296, 38 So. 174, validity of will made in Louisiana by citizen thereof bequeathing realty situated in Mississippi is governed by laws of latter; Fenderson v. Missouri Tie etc. Co., 104 Mo. App. 295, 78 S. W. 820, duly authenticated record of foreign will affords no presumption that it was duly proved, so as to dispense with proof of such facts in support of title to land depending thereon.

10 Wheat. 204-245, 6 L. 303, WRIGHT v. DENN.

Syl. 1 (II, 414). Devise for life.

Approved in McCaffrey v. Manogue, 196 U. S. 569, 49 L. 602, 25 Sup. Ct. 319, where testator disposes of whole estate to heirs as devisees equally, they take fee in lands.

10 Wheat. 246-305, 6 L. 314, UNITED STATES v. MORRIS.

Syl. 3 (II, 416). Remission of forfeitures.

Approved in Marvin v. Trout, 199 U. S. 225, 50 L. 162, 26 Sup. Ct. 31, upholding Ohio Rev. St., § 4275, authorizing action to subject building knowingly permitted to be used for gambling purposes to payment of judgment obtained by informer for recovery of money lost by play; Walker v. Globe Newspaper Co., 140 Fed. 309, Rev. St., §§ 4965, 4970, do not take away right of owner of copyrighted map to recover damages for infringement.

10 Wheat. 333-358, 6 L. 334, BANK OF UNITED STATES v. BANK OF GEORGIA.

Syl. 2 (II, 422). Liability for loss by forgery.

Approved in Kenneth Inv. Co. v. National Bank, 103 Mo. App. 619, 77 S. W. 1003, applying principle; Troll v. Sauerburn, 114 Mo. App. 327, 89 S. W. 366, where there were many deeds of trust with same trustee on certain property and holder of one, after purchasing property on foreclosure, released his deed, believing junior lienholder had no lien, release canceled for mistake; Ford v. People's Bank, 74 S. C. 183, 54 S. E. 205, determining right of holder of forged draft to retain money obtained.

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10 Wheat. 367-395, 6 L. 343, DE WOLF v. JOHNSON.

Syl. 1 (II, 426). Law governing loans.

Approved in In re Worth, 130 Fed. 930, under Iowa Code, 1897, § 3041, making usurious contract voidable only to extent of usurious interest, creditors of bankrupt cannot set up defense of usury against claim of another creditor; Midland etc. Co. v. Solomon, 71 Kan. 189, 79 Pac. 1079, bond and mortgage on land here governed by its terms by laws of Colorado is enforceable here though interest would be higher than allowed by local laws; Trower Bros. Co. v. Hamilton, 179 Mo. 225, 77 S. W. 1087, where Missourian goes to lender in Kansas and executes note payable there and secured by mortgage on cattle in Missouri, which is recorded in latter state, both note and mortgage are Kansas contracts; Benjamin Bank v. Doherty, 42 Wash. 328, 84 Pac. 875, where note valid in state where executed, fact that its payment was secured by mortgage on property in Washington did not render it subject to usury laws of Washington.

Syl. 7 (II, 430). Plea of usury is personal.

Approved in Lefmann v. Brill, 142 Fed. 49, where wife in maintenance suit made mortgagee of husband a party, but court in awarding her husband's interest in mortgaged property refused to pass on validity of mortgage but dismissed mortgagee's cross-petition, his mortgage not having matured, decree not bar to subsequent foreclosure; In re Worth, 130 Fed. 931, under Iowa Code 1897, § 3041, making usurious contract voidable only to extent of usurious interest, creditors of bankrupt cannot set up defense of usury against claim of another creditor; Barney v. Fontine Surety Co., 131 Mich. 196, 91 N. W. 142, assignee of contract cannot avail himself of defense of usury.

10 Wheat. 449-454, 6 L. 363, DAY v. CHISM.

Syl. 1 (II, 438). Warranty—Eviction by paramount title.

Approved in Pabst Brewing Co. v. Thorley, 145 Fed. 122, where defendant obtained permission to construct vault in street subject to revocation when space required for public improvement, and leased premises with appurtenances and later vault permit canceled, making property leased unfit for purpose intended, defendant liable for breach of covenant for quiet enjoyment.

10 Wheat. 465-472, 6 L. 367, DARBY'S LESSEE v. MAYER.

Syl. 1 (II, 440). Lex rei sitae governs devise of lands.

Approved in Succession of Hasling, 114 La. 295, 38 So. 174, validity of will made in Louisiana by citizen thereof devising land in Mississippi is governed by law of latter.

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XI WHEATON.

11 Wheat. 59-78, 6 L. 419, ETTING v. BANK OF UNITED STATES.

Syl. 3 (II, 450). Affirmance on division of court.

Approved in dissenting opinion in Walling v. Bown, 9 Idaho, 748, 76 Pac. 321, majority declining to reopen question of validity of statute where interests have become settled under prior decisions.

Syl. 4 (II, 450). Corporation's liability for agent's representations.

Approved in Sherman v. Harbin, 125 Iowa, 182, 100 N. W. 631, where fidelity bond of president of mutual life association filed pursuant to statute and society not called on by surety for information concerning president's past conduct, association not guilty of fraudulent concealment.

11 Wheat. 78-102, 6 L. 423, BROOKS v. MARBURY.

Syl. 6 (II, 453). Stare decisis.

Approved in Harwood v. Wentworth, 4 Ariz. 401, 42 Pac. 1031, journals of two houses are inadmissible to show that parts of bill, as passed by two houses, were omitted from enrolled bill, as signed by presiding officers and governor.

(II, 451.) Miscellaneous. Cited in Coney Island Co. v. Dennan, 149 Fed. 692, no error to refuse requested instruction which is not entirely correct.

11 Wheat. 103-134, 6 L. 429, HARDING v. HANDY.

Syl. 3 (II, 456). Cancellation—Deeds—Undue influence.

Approved in Shevlin v. Shevlin, 96 Minn. 412, 105 N. W. 262, applying rule in action to set aside contract for transfer of stock made by younger brother with elder brother on ground of fraud.

Syl. 5 (II, 458). Report of master—Failure to except.

Approved in Fordyce v. Omaha etc. R. R. Co., 145 Fed. 557, following rule; Butler v. Georgia etc. Ry. Co., 119 Ga. 961, 47 S. E. 321, neglect of party excepting to master's report to point out by reference to auditor's brief of evidence those portions of evidence relied on is sufficient reason for disapproval of exceptions.

Distinguished in dissenting opinion in Markey v. State, 47 Fla. 64, 37 So. 62, majority holding where order appoints one to take testimony in divorce, but fails to designate him by any official title, he has authority to administer oaths.

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11 Wheat. 171-183, 6 L. 443, BANK OF UNITED STATES v. SMITH.

Syl. 2 (II, 460). Pleading—Facts necessary to be alleged.

Approved in Hall v. Campbell, 161 Ind. 411, 68 N. E. 894, specifications of contract in election contest must show that contested ballots were protested, so as to be preserved and returned to clerk of court.

11 Wheat. 184-191, 6 L. 448, UNITED STATES v. VAN ZANDT.

Syl. 1 (II, 463). Law requiring periodical settlements directory.

Approved in Lake Co. v. Neilon, 44 Or. 20, 74 Pac. 214, failure of tax collector to turn over collections to treasurer as required by law does not raise presumption of conversion.

11 Wheat. 199-215, 6 L. 454, HINDE'S LESSEE v. LONGWORTH.

Syl. 6 (II, 470). Fraudulent conveyance—Gifts—Presumptions.

Approved in Polk Co. Nat Bank v. Scott, 132 Fed. 900, 66 C. C. A. 51, refusing to set aside conveyance from husband and wife for recited consideration of $1, where shown that there was no fraudulent intent.

11 Wheat. 237-257, 6 L. 463, PERKINS v. HART.

Syl. 4 (II, 475). Presumptions from account stated.

Distinguished in Sharp v. Behr, 136 Fed. 798, where plaintiff was by contract entitled to one dollar per ton royalty and defendant asked for reduction of royalty but plaintiff did not reply thereto nor to account crediting him with reduced royalties, but later refused to accept check for reduced royalties, he is not precluded from claiming royalties at contract rate.

11 Wheat. 258-279, 6 L. 468, ARMSTRONG v. TOLER.

Syl. 2 (II, 482). New contract—Prior illegality.

Approved in Padilla v. Padilla, 11 N. M. 553, 70 Pac. 566, where brother recovered judgment in own name in court of claims, for Indian depredation on property owned jointly with sister, his contract before judgment to give her half of recovery is valid; Monahan v. Monahan, 77 Vt. 143, 59 Atl. 172, 70 L. R. A. 935, where complaint seeks to impress securities with trust and alleges they were secretly taken in defendant's name without his knowledge, and issues raised only as to title, fact that securities put in defendant's name to avoid taxes not ground for relief.

11 Wheat. 280-303, 6 L. 474, CHIRAC v. REINICKER.

Syl. 1 (II, 487). Witnesses—Attorney—Privileged communications.

Approved in Ex parte Gfeller, 178 Mo. 269, 77 S. W. 558, in proceedings for discovery of decedent's assets, attorney for decedent must answer questions as to when he last saw certain securities be-

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longing to decedent and whether after death he had money belonging to decedent and what he did with it.

Syl. 2 (II, 487). Conclusiveness of recovery in ejectment.

Approved in King v. Davis, 137 Fed. 220, where ejectment brought by third person against tenant, and landlord has no knowledge of action in time to have made himself a party, he may have default judgment against tenant opened, and be allowed to defend.

11 Wheat. 304-309, 6 L. 480, FINLEY v. BANK OF UNITED STATES.

Syl. 2 (II, 491). Foreclosure—Prior encumbrances.

Approved in Iron Cliffs Co. v. Negaunee Iron Co., 197 U. S. 472, 49 L. 840, 25 Sup. Ct. 474, decree of state court requiring defendants to vacate lands and enjoining them from further mining thereon, bill being based on theory that corporation lessor of defendant was no longer in existence, is not reviewable in supreme court in proceeding in which corporation is not party.

11 Wheat. 309-319, 6 L. 481, WETZELL v. BUSSARD.

Syl. 2 (II, 492). Limitations—Acknowledgment of debt.

See 102 Am. St. Rep. 757, note.

11 Wheat. 320-324, 6 L. 484, FOWLE v. COMMON COUNCIL OF ALEXANDRIA.

Syl. 1 (II, 495). Demurrer to evidence.

Approved in Igram v. Jacksonville St. Ry. Co., 43 Fla. 327, 30 So. 801, where statement of facts reduced to record under demurrer to evidence is loose and indeterminate, judge should refuse to give judgment on demurrer; Bass v. Rublee, 76 Vt. 402, 57 Atl. 966, no final judgment can be rendered on appeal on demurrer to evidence where there is no joinder in demurrer in record.

11 Wheat. 332-360, 6 L. 488, GOVERNEUR'S HEIRS v. ROBERTSON.

Syl. 2 (II, 496). Grant to alien—Subsequent naturalization.

Approved in Shea v. Nilima, 133 Fed. 215, 66 C. C. A. 263, following rule.

Syl. 3 (II, 496). Alien taking realty by grant.

Approved in Louisville Property Co. v. Mayor & City Council of Nashville, 114 Tenn. 221, 84 S. W. 812, purchase of realty by foreign corporation which had not complied with statutes relating to foreign corporations is valid.

11 Wheat. 380-392, 6 L. 500, PATTERSON v. WINN.

Syl. 2 (II, 504). Collateral attack on void grant.

Approved in Reeve v. North Carolina Land etc. Co., 141 Fed. 825, under Tennessee statutes governing grants of state lands, valid en-

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try is not essential to grant, and older of two conflicting grants, each based on void entry, passes state's title; Davis v. Molyes, 76 Vt. 32, 56 Atl. 176, grant of land from state passes only title which state had.

11 Wheat. 392-413, 6 L. 502, UNITED STATES v. AMEDY.

Syl. 4 (II, 508). Crimes—Liability of corporation.

Approved in dissenting opinion in Hale v. Henkel, 201 U. S. 85, 50 L. 670, 26 Sup. Ct. 370, majority holding corporation charged with violation of anti-trust act is entitled to immunity from compulsory production before grand jury, under subpoena duces tecum, of all papers and contracts between it and other companies.

11 Wheat. 414, 415, 6 L. 508, WILLIAMS v. BANK OF UNITED STATES.

Syl. 1 (II, 510). Appeal by one from joint judgment.

Approved in Port v. Schloss Bros. & Co., 149 Fed. 732, where two partners jointly sued on firm debt and judgment entered against both, one cannot appeal alone in absence of service or sufficient showing for nonjoinder.

11 Wheat. 415-417, 6 L. 508, BARNES v. WILLIAMS.

Syl. 1 (II, 511). Remand—Special verdict insufficient.

Approved in Anglo-American etc. Co. v. Lombard, 132 Fed. 734, 68 C. C. A. 89, following rule.

11 Wheat. 431-441, 6 L. 512, MILLS v. BANK OF UNITED STATES.

Syl. 3 (II, 516), note payable at bank—Usages.

Distinguished in Landa v. Traders' Bank, 118 Mo. App. 366, 94 S. W. 773, where depositor and bank made contract whereby bank was to collect drafts for ten per cent, and bank's custom was to send collections to correspondents who gave credit to bank, custom did not make correspondent agent of depositor.

Syl. 8 (II, 518). Notes—Burden of proving indorsement.

Approved in Sears v. Daly, 43 Or. 350, 73 Pac. 6, in action on note where execution denied, there is no presumption that it was regularly executed.

(II, 514.) Miscellaneous. Cited in Cudahy etc. Co. v. State Nat. Bank, 134 Fed. 545, 67 C. C. A. 662.

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XII WHEATON.

12 Wheat. 1-18, 6 L. 531, THE PALMYRA.

Syl. 1 (II, 522). Reinstatement of dismissed cause.

Distinguished in State v. Marsh, 134 N. C. 200, 204, 205, 47 S. E. 12, 13, 14, 67 L. R. A. 179, where on appeal from conviction judgment was reversed on ground that indictment as contained in record failed to show material allegation, which was in fact omitted by misprision of clerk, supreme court could after term grant certiorari for correction of record and reset case for hearing.

Syl. 5 (II, 524). Libel in rem—Conviction of persons.

Approved in Scow No. 36, 144 Fed. 934, 935, under 30 Stat. 1152, 1153, vessel used in depositing refuse matter in navigable waters is liable to penalties though act was without knowledge or intent of owners; The Bulley, 138 Fed. 172, vessel is liable for tortious act of her master or member of crew on board in her service by which another vessel is injured, though committed without authority or knowledge of the owners.

Syl. 7 (II, 525). Probable cause for seizure bars damages.

Approved in United States v. Donaldson Shulz Co., 142 Fed. 301, judgment of acquittal in criminal prosecution for obstructing navigable stream bars suit in equity to compel removal of structure.

(II, 522.) Miscellaneous. Cited in The Ben R., 134 Fed. 785, 67 C. C. A. 290, decreeing dismissal of libel in proceeding to enforce penalty for violation of Rev. St., sec. 4499.

12 Wheat. 40-63, 6 L. 544, CLARK v. CITY OF WASHINGTON.

Syl. 2 (II, 530). Acts of municipal agents.

Approved in Mayor etc. of Jersey City v. Town of Harrison, 7 N. J. L. 71, 58 Atl. 101, municipal contract for water supply is contract for sales of goods, wares and merchandise, within statute of frauds; Oklahoma City v. Hill Bros., 6 Okl. 139, 50 Pac. 250, determining damages for which city liable for trespass by its officers. See 108 Am. St. Rep. 165, note.

12 Wheat. 64-116, 6 L. 552, UNITED STATES BANK v. DANDRIDGE.

Syl. 3 (II, 533). Corporate acts need not be written.

Approved in Board of Commrs. v. Tollman, 145 Fed. 771, in action on county bonds, parol evidence is admissible to establish facts concerning their execution; City of Denver v. Spencer, 34 Colo. 274, 82 Pac. 591,

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2 L. R. A. (N. S.) 147, where city charter silent as to manner in which park commissioners should act, parol evidence admissible to show board authorized erection of stand, where secretary failed to make record; State v. Farrier, 114 La. 586, 38 So. 462, witness present at meeting held for election of officers of association may testify as to who were elected.

Syl. 4 (II, 535). Presumption as to power of officer.

Approved in United States v. Mitchell, 136 Fed. 906, where United States district attorney was appointed by court having authority to make valid appointment, he is de facto officer and it is no objection to indictment that he was not permanent resident of district; St. Louis Police etc. Assn. v. Tierney, 116 Mo. App. 462, 91 S. W. 972, 973, construing constitutional provisions of mutual benefit society as to designation of third day for calling by applicant to designate beneficiary as merely directory; Pine Tree Lumber Co. v. Fargo, 12 N. D. 376, 96 N. W. 363, applying rule to acts of city officers; Board of Education v. Boyer, 5 Okl. 231, 233, 47 Pac. 1092, 1093, where petition recited that signers electors of adjacent territory presented to city board of education, and board orders territory annexed to city for school purposes, and entry made on journal, presumption arises that petition signed by majority; Houseman v. International Navigation Co., 214 Pa. 563, 64 Atl. 383, under act of 1806, relating to patent for island, plaintiff in ejectment need not show, by evidence other than warrant, survey and patent, that island was natural and capable of cultivation; Grand Rapids Furniture Co. v. Grand Hotel etc. Co., 11 Wyo. 149, 72 Pac. 687, on mere proof that three persons were only stockholders of corporation, no presumption arose that they were trustees thereof.

Syl. 5 (II, 537). Corporations—Presumption of officer's authority.

Approved in Rosehill Cemetery Co. v. Dempster, 223 Ill. 578, 79 N. E. 279, where syndicate of stockholders owning majority stock employed financier to complete settlement between corporation and creditors, and after reorganization directors compensated agent and corporation accepted benefits of settlement, corporation ratified employment; Pine Tree Lumber Co. v. Fargo, 12 N. D. 381, 96 N. W. 365, applying rule to acts of city officers.

12 Wheat. 129-134, 6 L. 575, MONTGOMERY v. HERNANDEZ.

Sly. 2. (II, 548). Accrual of action on official bond.

See 101 Am. St. Rep. 173, note.

12 Wheat. 136-152, 6 L. 577, POSTMASTER GENERAL v. EARLY.

Syl. 1 (II, 550). Statutory construction is for courts.

Approved in Territory v. Albright, 12 N. M. 306, 78 Pac. 208, assessor appointed pursuant to Laws 1903, p. 80, amending Laws 1903, p. 38, relating to division of Bernalillo county, before act dividing county went into effect, not entitled to office.

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12 Wheat. 153-169, 6 L. 583, JACKSON v. CHEW.

Syl. 1 (II, 552). Following state statutory construction.

Approved in Southern Pac. Co. v. Western Pac. Ry. Co., 144 Fed. 179, construing grant of Oakland waterfront; Treat v. City of Chicago, 130 Fed 444, 64 C. C. A. 645, applying rule where state court upheld validity of Illinois local improvement act.

12 Wheat. 183-193, 6 L. 595, THORNTON v. WYNN.

Syl. 3 (II, 561). Sales—Rescission of action on warranty.

Approved in McRae v. Lonsby, 130 Fed. 20, 64 C. C. A. 385, where defendants claim right to rescind contract by reason of falsity of representations made by plaintiff concerning property purchased, it was immaterial whether defendants relied on representations per se, or on express warranty of their truth.

Distinguished in Coyle v. Baum, 3 Okl. 706, 41 Pac. 393, where one bought oats for horse feed and found they contained castor beans, and returned unused portion, receiving money back therefor, there was neither compromise nor accord and satisfaction for breach of warranty.

12 Wheat. 193-199, 6 L. 599, MALLOW v. HINDE.

Syl. 1 (II, 563). Equitable relief—Presence of parties.

Approved in Moore v. Maryland Casualty Co., 73 N. H. 519, 111 Am. St. Rep. 649, 63 Atl. 491, where street railway employer obtained judgment, and on railroad's insolvency sued indemnity company to compel payment of indebtedness on policy to railroad, latter's receiver indispensable party; Lynch v. United States, 13 Okl. 158, 73 Pac. 1100, applying rule in suit to cancel townsite patent; State v. Gormley, 40 Wash. 604, 82 Pac. 930, 3 L. R. A. (N. S.) 256, action to restrain payment of county warrants cannot be maintained where holders of warrants are not made defendants.

12 Wheat. 206-212, 6 L. 603, EDWARDS' LESSEE v. DARBY.

Syl. 1 (II, 565). Statutes—Contemporaneous construction.

Approved in Houghton v. Payne, 194 U. S. 100, 103, 48 L. 891, 892, 24 Sup. Ct. 590, books complete in themselves, though published at stated intervals and in consecutive numbers, entitled to second-class postage rates; Lorsch v. United States, 135 Fed. 215, provision in par. 435, Tariff Act 1897, c. 11, § 1, sched. N., for imitation of precious stones not exceeding an inch in dimensions, measurement contemplated is that of any single dimension; Avery v. Pima Co., 7 Ariz. 32, 60 Pac. 703, construing Rev. St. U. S., §§ 5539, 5547, relating to control of federal prisoners in state prisons; Henry v. State, 87 Miss. 59, 39 So. 872, construing Rev. Code, 1892, § 3201, relating to working of convicts on farm leased for that purpose; Pitts v. Logan County, 3 Okl. 740, 41 Pac. 591, act regulating accounting by clerks of territorial district court for fees is void; dissenting opinion in Bates

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etc. Co. v. Payne, 194 U. S. 111, 48 L. 896, 24 Sup. Ct. 595, majority holding refusal by postmaster general to admit to mails periodical as second class, each issue of which is complete in itself, not reviewable by courts.

12 Wheat. 213-369, 6 L. 606, OGDEN v. SAUNDERS.

Syl. 1 (II, 569). Law governing contracts.

Approved in Greenville Nat. Bk. v. Evans-Snyder-Buell Co., 9 Okl. 364, 60 Pac. 253, chattel mortgage executed and filed conformably to laws of another state on property therein is superior to local attachment after brought here, though mortgage not recorded here.

Syl. 3 (II, 572). Impairment of obligation of contracts.

Approved in Low Foon Yin v. United States etc. Commr., 145 Fed. 796, upholding Chinese Exclusion Act of 1892, placing burden of proof of right of Chinese without certificate to remain in United States on him; Miners' etc. Bank v. Snyder, 100 Md. 65, 108 Am. St. Rep. 390, 59 Atl. 708, 68 L. R. A. 312, upholding Acts 1904, p. 597, c. 337, taking away pre-existing right of creditor to enforce stockholders' liability and substituting therefor suit in equity by all creditors against all stockholders.

Syl. 5 (II, 574). Statutes presumed valid.

Approved in Board of Commrs. v. Tollman, 145 Fed. 766, upholding Act N. C. 1885, p. 445, c. 233, § 14, providing for issuance of county aid bonds for railroad; McGovern v. Mitchell, 78 Conn. 564, 63 Atl. 443, upholding Laws 1905, p. 410, c. 213, increasing salaries of judges; dissenting opinion in Allen v. Reed, 10 Okl. 153, 63 Pac. 876, majority holding void act of 1893, relating to change of county seat.

Syl. 8 (II, 578). State insolvency laws valid, when.

Approved in Boston etc. Co. v. Ould-Carter Co., 123 Ga. 463, 51 S. E. 468, in absence of proceeding in federal courts, state courts have jurisdiction of cases within purview of insolvent traders' act.

Syl. 21 (II, 583). Extraterritorial effect of insolvency discharge.

Approved in In re Salmon, 143 Fed. 405, holding Rev. St. Mo. 1899, §§ 1305, 1306, relating to liquidation of insolvent banks, is, in respect to private banks, superseded by bankruptcy act of 1898; Holshouser v. Copper Co., 138 N. C. 255, 50 S. E. 653, 70 L. R. A. 183, New Jersey statute declaring annual license fee imposed on corporations shall be preferred debt on insolvency does not give such claim preference in insolvency proceedings in another state.

12 Wheat. 419-460, 6 L. 678, BROWN v. STATE OF MARYLAND.

Syl. 3 (II, 595). Duties on imports.

Approved in Shaw v. United States, 141 Fed. 471, importation of wine in casks having wantage in excess of normal, collector cannot

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assess duty without allowance for excess; In re Sydow, 4 Ariz. 210, 36 Pac. 215, upholding Act No. 83, Laws 1893, licensing peddlers. See 112 Am. St. Rep. 649, note.

Syl. 5 (II, 596). Statutes—Exception of particular thing.

Approved in Bacon v. Locke, 42 Wash. 217, 83 Pac. 721 holding void Laws 1905 providing for license tax on peddlers of goods after shipment to state.

Syl. 6 (II, 597). Power, how exercised.

Approved in Northern Securities Co. v. United States, 193 U. S. 336, 48 L. 700, 24 Sup. Ct. 436, upholding enforcement of anti-trust act by injunction against corporation organized in pursuance of combination of stockholders of two competing interstate railroads; Toney v. State, 141 Ala. 125, 109 Am. St. Rep. 23, 37 So. 334, 67 L. R. A. 286, holding void act of 1901, making it penal to break labor contracts.

Syl. 7 (II, 597). State tax on imports.

Approved in Kehrer v. Stewart, 197 U. S. 65, 49 L. 666, 25 Sup. Ct. 403, upholding Georgia act of 1900, imposing tax on resident managing agents of nonresident meat-packing houses; Commonwealth v. Caldwell, 190 Mass. 357, 76 N. E. 955, holding void Rev. Laws, c. 65, §§ 15, 16, permitting sale by peddlers of agricultural products of United States without license, but forbidding unlicensed sales of foreign products; Range Co. v. Campen, 135 N. C. 517, 522, 523, 529, 531, 47 S. E. 662, 664, 666, 667, holding void Revenue Act 1903, § 36, levying tax on peddlers, as applied to sales by sample of goods manufactured in another state and delivered in original packages. See 104 Am. St. Rep. 299, note.

Distinguished in Cook v. Marshall Co., 196 U. S. 269, 270, 275, 49 L. 474, 477, 25 Sup. Ct. 233, upholding Iowa Code, § 5007, as applied to sales at retail of packages of ten cigarettes each which had been imported loose to retail; American Steel etc. Co. v. Speed, 110 Tenn. 546, 100 Am. St. Rep. 814, 75 S. W. 1042, where goods sent in original packages to agent and delivered in that form to customers, and ninety per cent went to jobbers out of state and balance to jobbers in state, goods taxable.

Syl. 8 (II, 599). Loss of character as import.

Approved in Range Co. v. Campen, 135 N. C. 526, 47 S. E. 665, holding void Revenue Act 1903, § 36, levying tax on peddlers as applied to sales by sample of goods manufactured in another state and delivered in original package; Hagan v. City of Richmond, 104 Va. 732, 3 L. R. A. (N. S.) 1120, 52 S. E. 389, upholding power of local authorities to keep navigable waters unobstructed where Secretary of War fails to act.

Syl. 9 (II, 600). State tax on occupations.

Approved in Range Co. v. Campen, 135 N. C. 519, 47 S. E. 662, holding void Revenue Act 1903, § 36, levying tax on peddlers as

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applied to sales by sample of goods manufactured in another state and delivered in original package.

Syl. 12 (II, 602). Extent of state's taxing power.

Approved in Davis v. Cleveland etc. Ry. Co., 146 Fed. 409, cars owned by railroad and delivered by it to another road, with freight, to be used in transportation of such freight to another state, are not attachable under laws of state into which they are carried; United States v. Green, 137 Fed. 188, under Oleomargarine Act, § 1, arrival of renovated butter duly stamped and labeled within state other than that from which it was shipped did not remove liability for violating act; Range Co. v. Campen, 135 N. C. 514, 516, 47 S. E. 661, holding void Revenue Act 1903, § 36, levying tax on peddlers as applied to sales by sample of goods manufactured in another state and delivered in original package; Greek etc. Sponge Co. v. Richardson etc. Co., 124 Wis. 475, 102 N. W. 890, transaction by which merchandise is sold to domestic corporation by foreign corporation, and is consigned to local agent of latter for inspection by purchaser, and after inspection to be delivered in original package, constitutes interstate commerce.

Syl. 13 (II, 603). State interference with commerce.

Approved in Northern Securities Co. v. United States, 193 U. S. 353, 48 L. 706, 24 Sup. Ct. 436, upholding enforcement of anti-trust act by injunction against corporation organized in pursuance of combination of stockholders of two competing interstate railroads.

12 Wheat. 460-480, 6 L. 693, UNITED STATES v. GOODING.

Syl. 3 (II, 613). Crimes—Burden of proof.

Approved in State v. Shuff, 9 Idaho, 130, 72 Pac. 669, it is error to instruct that to establish defense on ground of insanity it must be clearly proved by defendant by preponderance of evidence given upon trial.

Syl. 7 (II, 614). Indictment in language of statute.

Approved in United States v. Lake, 129 Fed. 501, upholding sufficiency of indictment against president of bankrupt corporation for making false oath to its schedule.

(II, 611.) Miscellaneous. Cited in Betts v. United States, 132 Fed. 231, 65 C. C. A. 452.

12 Wheat. 480-486, 6 L. 700, UNITED STATES v. MARCHANT & COLSON.

Syl. 1 (II, 616). Joint indictment—Peremptory challenges.

Approved in Sawyer v. United States, 202 U. S. 159, 160, 161, 50 L. 976, 977, 26 Sup. Ct. 575, conditional right of challenge on behalf of government in criminal case, which has effect of setting aside juror until panel is exhausted, without assigning cause, is

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proper; Betts v. United States, 132 Fed. 236, 65 C. C. A. 452, that number of indictments against same defendant for using mails to defraud are tried together by same jury does not affect right to three peremptory challenges for each indictment.

Syl. 4 (II, 618). Separate trials of joint defendants.

Approved in Cochran v. United States, 147 Fed. 207, applying principle to trial in Oklahoma territorial court on indictment against laws of United States.

12 Wheat. 498-505, 6 L. 706, POTTER v. GARDNER.

Syl. 3 (II, 620). Land charged with testator's debt.

Approved in Johnson v. Georgia Loan etc. Co., 141 Fed. 597, bona fide purchaser must allege and prove want of notice and actual payment of purchase money independently of recitals in deed.

12 Wheat. 505-511, 6 L. 709, UNITED STATES v. NICHOLL.

Syl. 1 (II, 621). Law requiring periodical settlements directory.

Approved in Lake Co. v. Neilon, 44 Or. 20, 74 Pac. 214, failure of tax collector to turn over collections to treasurer as required by law does not raise presumption of conversion.

Syl. 2 (II, 621). Liability of sureties on official bond.

See 103 Am. St. Rep. 933, note.

12 Wheat. 546-554, 6 L. 723, THE ANTELOPE.

Syl. 2 (II, 628). No cost decree against United States.

Approved in State v. Williams, 101 Md. 534, 109 Am. St. Rep. 583, 61 Atl. 299, 1 L. R. A. (N. S.) 254, no costs against state.

12 Wheat. 559-561, 6 L. 728, UNITED STATES v. BARKER.

Syl. 1 (II, 631). Diligence where government holds draft.

Approved in Mountain Copper Co. v. United States, 142 Fed. 629, applying rule in suit to enjoin injuries to timber lands by operation of smelter; Walker v. United States, 139 Fed. 413, 414, limitation in act of 1887, authorizing suits against United States, in case of suit by marshal to recover fees, begins to run as to each item from time service rendered, and not from expiration of plaintiff's term of office.

12 Wheat. 570-574, 6 L. 732, NEWMAN v. JACKSON.

(II, 634.) Miscellaneous. Cited in Wade v. Gould, 8 Okl. 695, 59 Pac. 12, issue of animals follows mother.

12 Wheat. 586-590, 6 L. 737, CHOTARD v. POPE.

Syl. 3 (II, 636). No entry on lands previously appropriated.

Approved in McMichael v. Murphy, 12 Okl. 160, 70 Pac. 191, following rule.

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12 Wheat. 599-603, 6 L. 741, DE LA CROIX v. CHAMBERLAIN.

Syl. 1 (II, 638). Spanish grant—Order of survey.

Approved in Ainsa v. New Mexico etc. R. R. Co., 4 Ariz. 239, 36 Pac. 214, territorial court cannot recognize unconfirmed Mexican grant as to which no proceedings are pending before Congress, surveyor general, nor private land court, as against pre-emption and homestead claims filed under United States laws.

12 Wheat. 605-611, 6 L. 744, SCOTT v. SHREEVE.

Syl. 2 (II, 639). Equitable relief against judgment.

Approved in Dubreuil v. Gaither, 98 Md. 545, 56 Atl. 966, though in action against receiver of insolvent bank for balance of deposit to credit of one as trustee, receiver not allowed setoff of balance due on note of insolvent partnership, he may seek setoff in suit against partners who are real owners of deposit.

12 Wheat. 611-643, 6 L. 746, RAMSAY v. ALLEGRE.

Syl. 1 (II, 639). Supplies in home port—Suit in personam.

Approved in The Sue, 137 Fed. 135, arguendo.

I PETERS.

1 Pet. 1-17, 7 L. 27, HUNT v. ROUSMANIERE.

Syl. 2 (II, 642). Reformation of instruments.

Approved in Carrell v. McMurray, 136 Fed. 670, applying rule in reformation of deed given in exchange of farm for stock of goods; Johnson v. Sherwood, 34 Ind. App. 507, 73 N. E. 187, reforming mortgage so that description would show right of way over land; Scott v. Ford, 45 Or. 544, 78 Pac. 746, 68 L. R. A. 469, denying recovery to executors who paid sum to grandchild under mistaken belief that she was heir under grandfather's will.

Syl. 4 (II, 644). Equitable relief against mistake of fact.

Approved in Wright v. Vocalion Organ Co., 148 Fed. 214, applying rule in suit for specific performance of contract for interest in future inventions.

Syl. 6 (II, 645). Reformation of instruments—Mistake of law.

Approved in Utermehle v. Norment, 197 U. S. 56, 49 L. 662, 25 Sup. Ct. 291, ignorance of law that party taking benefit of provision in his favor under will is estopped to assert invalidity of instrument, though coupled with ignorance of evidence on which contest could be based, does not prevent application of rule; Burk

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v. Johnson, 146 Fed. 214, where, on purchase of copyrighted plans for establishment of mutual burial associations, defendant made misrepresentations that plan not subject to supervision of state insurance departments, rescission not granted; Daniels v. Dean, 2 Cal. App. 428, 84 Pac. 335, applying rule, where widow, mistakenly believing she was not entitled to homestead in deceased husband's property, executed abandonment in consideration of payment of husband's executors.

Syl. 7 (II, 649). Reformation of instruments—Mistake.

Approved in dissenting opinion in Thomas v. Provident Life Ins. Co., 138 Fed. 368, majority holding where executors applied proceeds of loan raised by mortgage of real estate belonging to testator to pay debts of estate, estate bound to repay amount advanced with interest, though executors not authorized by terms of will to execute mortgage.

1 Pet. 25-36, 7 L. 37, BANK OF WASHINGTON v. TRIPLETT.

Syl. 8 (II, 654). Usage—Deposit in bank for collection.

Approved in Cudahy Packing Co. v. State Nat. Bank, 134 Fed. 545, 67 C. C. A. 662, provision for payment of attorney's fees in case note is not paid at maturity does not destroy negotiability of note otherwise negotiable; Landa v. Traders' Bank, 118 Mo. App. 366, 94 S. W. 773, where depositor left draft for collection with bank whose custom was to send collectors to correspondent, who placed proceeds to bank's credit, subject to owner's check, custom did not make correspondent depositor's agent; Pennsylvania R. R. Co. v. Naive, 112 Tenn. 253, 79 S. W. 127, 64 L. R. A. 443, where it is general custom at place to which freight is consigned not to give notice of arrival or make delivery on Fourth of July, negligence cannot be predicated on failure of carrier to give notice or make delivery on that day.

1 Pet. 46-88, 7 L. 47, MINOR v. MECHANICS' BANK.

Syl. 1 (II, 658). Statutes—When "may" means "must."

Approved in Equitable Life Assurance Society v. Host, 124 Wis. 671, 672, 102 N. W. 584, construing Rev. St. 1898, § 1952, providing for distribution of surplus accumulations of mutual life insurance companies; dissenting opinion in Henry v. State, 87 Miss. 119, 39 So. 893, majority upholding Rev. Code, 1892, § 3201, providing for leasing of convicts on leased farm; dissenting opinion in Jones v. Commissioners, 137 N. C. 612, 50 S. E. 302, majority construing Laws of 1903, p. 490, c. 289, relating to issuance of refunding bonds as mandatory.

Syl. 2 (II, 659). Statutes—Meaning of word "may."

Approved in United States v. Cornell Steamboat Co., 137 Fed. 459, 69 C. C. A. 603, under Rev. St., § 2984, relating to refunding of

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duties on damaged goods, Secretary of Treasury cannot arbitrarily refuse refund; Hampden Trust Co. v. Leary, 186 Mass. 581, 72 N. E. 89, construing deed of trust.

Syl. 14 (II, 663). Ratification of cashier's fraud—Stockholders.

Approved in American B. Co. v. Spokane etc. Co., 130 Fed. 740, 65 C. C. A. 121, where application for fidelity insurance by loan society stated that secretary insured derived authority from trustees, knowledge on part of president that secretary was indebted to society at time of application is not breach of warranty that secretary not indebted; Goshorn v. People's Nat. Bank, 32 Ind. App. 432, 102 Am. St. Rep. 248, 69 N. E. 186, bank is liable for misappropriation by cashier, who received from depositor check with instructions to transmit amount named to another.

Syl. 19 (II, 665). Nolle prosequi not retraxit.

Approved in Lindsay v. Allen, 112 Tenn. 651, 82 S. W. 173, mere dismissal of cause by consent of parties will not bar future action.

Syl. 20 (II, 665). Nolle prosequi—Severance by sureties.

Approved in Texas & P. Ry. Co. v. Sheftall, 133 Fed. 724, 66 C. C. A. 552, motion made pending term at hearing of motion for new trial to discontinue suit as to one defendant is timely though verdict and judgment have been entered.

(II, 658.) Miscellaneous. Cited in W. L. Wells Co. v. Gastonia Cotton Mfg. Co., 198 U. S. 185, 49 L. 1007, 25 Sup. Ct. 640, incorporators under charter which declares that they "are hereby created a body politic and corporate" become corporation under laws of Mississippi, for purpose of suit in federal court, as citizens of that state.

1 Pet. 89-93, 7 L. 65, PEARSON v. BANK OF METROPOLIS.

Syl. 2 (II, 668). Demand—Payment at particular place.

Approved in Nelson v. Grondahl, 13 N. D. 366, 100 N. W. 1095, following rule.

1 Pet. 100-104, 7 L. 69, UNITED STATES v. SALINE BANK.

Syl. 1 (II, 669). Exposure to penalty bars discovery.

Approved in Ballmann v. Fagin, 200 U. S. 195, 50 L. 437, 26 Sup. Ct. 212, possibility that book which grand jury seeks in investigating liability of national bank employee for disappearance of cash might show that owner was guilty of violating state "bucket-shop" laws, justifies refusal to produce book.

Distinguished in Hale v. Henkel, 201 U. S. 69, 50 L. 663, 26 Sup. Ct. 370, protection against unreasonable searches and seizures cannot be invoked to justify refusal of corporation officer to produce its

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paperr in obedience to subpoena duces tecum, issued in aid of grand jury investigation of violation of anti-trust act by corporation.

1 Pet. 110-135, 7 L. 135, GOVERNOR OF GEORGIA v. MADRAZO.

Syl. 4 (II, 671). Suit against state officer.

Approved in State v. Woodruff, 83 Miss. 117, 36 So. 81, in action against auditor and treasurer as successors of levee commissioners, state properly made party; dissenting opinion in Henry v. State, 87 Miss. 96, 97, 39 So. 884, 885, majority holding under Const., art. 5, defining executive powers, power of governor to sue at common law was superseded.

1 Pet. 138-150, 7 L. 85, GREENLEAF v. QUEEN.

Syl. 2 (II, 673). Stranger to trust cannot object to sale.

Cited in Mobile Land Imp. Co. v. Gass, 142 Ala. 528, 39 So. 232, arguendo.

1 Pet. 165-169, 7 L. 96, WRIGHT v. LESSEE OF HOLLINGSWORTH.

Syl. 2 (II, 677). Ruling on amendments or new trial discretionary.

Cited in Cassett v. Mitchell Coal & Coke Co., 150 Fed. 43, arguendo.

1 Pet. 170-192, 7 L. 98, McLANAHAN v. UNIVERSAL INS. CO.

Syl. 11 (II, 681). Insurance—Material representations.

Approved in Kerr v. Union Marine Ins. Co., 130 Fed. 417, 64 C. C. A. 617, where misrepresentation as to time of sailing of vessel on which insurance was requested was made in reply to specific question by insurer, it is conclusively presumed to have been material.

1 Pet. 193-221, 7 L. 108, COMEGYS v. VASSE.

Syl. 3 (II, 683). Assignability of torts and property rights.

Approved in In re Burnstine, 131 Fed. 831, where bankrupt prior to adjudication transferred to wife claim against railroad for killing of son, in consideration of payment of funeral expenses, it was valid to extent it was accepted as security for amount paid, and husband's bankruptcy trustee was entitled to assignment of claim only on payment of amount expended by wife.

(II, 681.) Miscellaneous. Cited in Smith v. Love, 49 Fla. 239, 38 So. 379, where patent obtained by fraudulent imposition on land officers, equity gives relief to party entitled to patent.

1 Pet. 232-237, 7 L. 125, HORSBURY v. BAKER.

Syl. 1 (II, 690). Forfeitures not enforceable in equity.

Approved in Jensen v. Deep Creek Farm etc. Co., 27 Utah, 77, 74 Pac. 430, following rule; Brewster v. Lanyon Zinc Co., 140 Fed. 818, enforcing forfeiture of oil lease for breach of condition to continue work of development with reasonable diligence; Duff v. Gilliland, 135

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Fed. 585, refusing to cancel contract assigning title to patented machine for certain royalties received from licenses, where assignee built machines at profit and granted licenses to those for whom it built; Wheeling etc. R. R. Co. v. Town of Triadelphia, 58 W. Va. 520, 52 S. E. 512, enjoining forfeiture of street railway privilege in street.

Distinguished in Sawyer v. Cook, 188 Mass. 167, 74 N. E. 357, where three persons bought land to sell in subdivisions, and legal title was put in two of them, all three to use best endeavors to sell, and one who held no legal title and who furnished no money ceased to participate and assigned interest, he could not require accounting of profits after thirty years.

1 Pet. 264-292, 7 L. 138, SCHIMMELPENNICH v. BAYARD.

Syl. 2 (II, 694). Drafts—Promise to accept.

Approved in Bank of Seneca v. First Nat. Bank, 105 Mo. App. 726, 78 S. W. 1093, where bank issued general letter of credit, checks drawn by bearer of letter and cashed by bank having no knowledge of letter cannot be applied in extinguishment of amount named in letter.

1 Pet. 299-310, 7 L. 152, MECHANICS' BANK v. SETON.

Syl. 1 (II, 697). Specific performance—Personalty contracts.

Approved in Ridenbaugh v. Thayer, 10 Idaho, 672, 80 Pac. 233, specifically enforcing contract to furnish wood, defendant to furnish money necessary to chop and deliver wood, when contract partly performed; Livesley v. Johnston, 45 Or. 49, 106 Am. St. Rep. 647, 76 Pac. 950, 65 L. R. A. 783, granting specific performance of contract of sale and delivery of hops at certain price, hops to be grown in succeeding five years, buyer to advance cost.

Syl. 4 (II, 698). Who are necessary parties.

Approved in Tod v. Crisman, 123 Iowa, 699, 99 N. W. 688, contractor to pay whom, board of supervisors has ordered levy of tax is not necessary party to certiorari to test legality of order.

1 Pet. 318-327, 7 L. 160, DOX v. POSTMASTER GENERAL.

Syl. 2 (II, 703). Laches of government officers—Sureties.

Approved in Christie Street Com. Co. v. United States, 129 Fed. 509, statements made by departmental officers to claimant for tax pending appeal to internal revenue commissioner, to effect that claim would be allowed or had been certified favorably to auditing office, do not estop government, so as to avoid operation of limitations. See 101 Am. St. Rep. 152, note.

1 Pet. 328-342, 7 L. 164, ELLIOTT v. PEIRSOL.

Syl. 10 (II, 705). Judgment binding till reversed.

Approved in Southern Pine L. Co. v. Ward, 16 Okl. 158, 85 Pac. 467, following rule; Ex parte Robinson, 144 Fed. 836, where circuit court

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had no jurisdiction of subject matter of suit, adjudication of contempt for violating injunction is void and collaterally attackable by habeas corpus; United States v. Atchison etc. Ry. Co., 142 Fed. 182, applying rule to contempt proceedings based on violation of void injunction against granting rebates; Harper v. Rankin, 141 Fed. 630, judgment of court of competent jurisdiction in favor of national bank receiver and against defendant duly served, based upon findings that defendant while officer of bank embezzled funds, is conclusive of character of indebtedness with reference to release of it in bankruptcy; Fay v. Costa, 2 Cal. App. 244, 83 Pac. 277, plaintiff's action against administrator, who took possession of property in belief that he was dead, is barred three years after knowledge; In re Patswald, 5 Okl. 795, 50 Pac. 141, when judge adjourned court for two days and went to another county while jury was not deliberating in criminal case, verdict rendered on his return is void.

1 Pet. 351-375, 7 L. 174, BELL v. MORRISON.

Syl. 6 (II, 716). Object of statute of limitations.

Approved in Lynchburg Cotton etc. Co. v. Travelers' Ins. Co., 140 Fed. 724, where insurance policy provides that action barred if not commenced within thirty days, and conduct of company induces delay beyond time, limitation runs from refusal to pay. See notes, 101 Am. St. Rep. 145; 102 Am. St. Rep. 757, 769.

Syl. 7 (II, 720). Limitations—New promise.

Approved in In re McGuire, 132 Fed. 394, holding duebill reciting amounts due and dates did not remove bar of limitations; Kleis v. McGrath, 127 Iowa, 462, 109 Am. St. Rep. 396, 103 N. W. 372, 69 L. R. A. 260, execution of note for unpaid interest on prior note does not remove bar of limitations.

1 Pet. 376-385, 7 L. 185, MECHANICS' BANK OF ALEXANDRIA v. LYNN.

Syl. 1 (II, 731). Specific performance—Modification of agreement.

Approved in Wright v. Vocalion Organ Co., 148 Fed. 214, applying rule in suit for specific performance of contract for interest in future inventions.

1 Pet. 386-454, 7 L. 189, CONRAD v. ATLANTIC INS. CO.

Syl. 7 (II, 734). Mortgage transfers property as security.

Approved in In re Moore, 146 Fed. 188, where instrument given as security for loan, and purporting to be deed, but not accompanied by reconveyance bond as required by Georgia code, and containing contradictory recitals, constitutes common-law mortgage, and where property was in debtor's possession, and surrendered to bankruptcy trustee, it is subject to sale as part of assets of his estate.

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Syl. 8 (II, 736). Judgment lien as property.

Approved in Illinois Nat. Bank v. School Trustees, 211 Ill. 511, 71 N. E. 1074, junior mortgagee may redeem from senior mortgagee and thereby become subrogated to all rights of such senior mortgagee.

Syl. 12 (II, 739). Bills of lading pass by indorsement.

Approved in General Electric Co. v. Southern Ry., 72 S. C. 254, 110 Am. St. Rep. 603, 51 S. E. 696, where freight shipped under bill of lading to order of shipper, notify third party, and draft was attached, carrier cannot deliver to third party without production of bill properly indorsed.

Syl. 14 (II, 739). Bills of lading—Assignment by owner of goods.

See 105 Am. St. Rep. 342, note.

1 Pet. 455-468, 7 L. 219, BANK OF COLUMBIA v. HAGNER.

Syl. 2 (II, 754). Vendor and vendee's undertaking dependent.

Approved in Michigan Home Colony Co. v. Tabor, 141 Fed. 336, following rule; Stein v. Waddell, 37 Wash. 639, 80 Pac. 186, where vendee's covenants to pay price and vendor's covenants to execute and deliver deed are mutual, vendor cannot sue to forfeit contract because of purchaser's failure to pay price on day specified, without executing and tendering deed.

Distinguished in Watkins v. American Nat. Bank, 134 Fed. 42, 67 C. C. A. 110, where vendor sued vendee for balance due on purchase money note, and vendee denied liability to pay balance because title to part of property lost, and court found value of unconveyed portion and gave judgment for defendant, vendee barred from suing for difference between value as found and amount due on note.

Syl. 5 (II, 748). Land sale—Time of essence of contract.

Approved in Seibel v. Purchase, 134 Fed. 488, applying rule where defendant sold option for purchase of realty exercisable by certain date but there was mortgage on property; Wright v. Astoria Co., 45 Or. 229, 77 Pac. 600, where, under contract, deed put in escrow for delivery on payment after examination of title, title passed to grantee on delivery of deed as against purchaser for grantor on day deed delivered.

1 Pet. 469-475, 7 L. 224, DOE EX DEM. ELMORE v. GRYMES.

Syl. 1 (II, 750). Peremptory nonsuit in federal court.

Approved in Parks v. Southern Ry. Co., 143 Fed. 278, applying rule in action for damages for negligent killing of person; Huntt v. McNamee, 141 Fed. 294, where voluntary nonsuit permitted by state practice, it is discretionary with federal court to refuse nonsuit after conclusion of plaintiff's evidence, and motion by defendant for direction of verdict had been sustained.

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1 Pet. 503-510, 7 L. 239, DAVIS v. MASON.

Syl. 2 (II, 756). Curtesy in wife's wild lands.

See 112 Am. St. Rep. 582, note.

1 Pet. 511-546, 7 L. 242, AMERICAN INS. CO. v. THREE HUNDRED AND FIFTY-SIX BALES OF COTTON.

Syl. 5 (II, 759). Transfer of territory by nations.

Approved in United States v. Winans, 198 U. S. 383, 49 L. 1093, 25 Sup. Ct. 662, fishing rights in Columbia river secured to Yakima Indians by treaty prevail over rights acquired to lands bordering on river, by virtue of patent; Dorr v. United States, 195 U. S. 141, 49 L. 129, 24 Sup. Ct. 808, upholding denial of jury trial in Philippines; In re Chavez, 147 Fed. 75, on bankruptcy of husband having only community estate under New Mexico laws, claims of antenuptial creditor are postponed until after community creditors satisfied.

Syl. 7 (II, 759). Power of governing territory.

Approved in Kepner v. United States, 195 U. S. 124, 49 L. 122, 24 Sup. Ct. 797, government cannot appeal from acquittal in court of first instance in the Philippines; Kneeland v. Korter, 40 Wash. 363, 82 Pac. 609, 1 L. R. A. (N. S.) 745, Congress has power to grant tide land between high and low water work within a territory of United States.

Syl. 9 (II, 761). Jurisdiction of territorial courts.

Approved in Higgins v. Tax Assessors of Pawtucket, 27 R. I. 408, 63 Atl. 37, upholding Practice Act 1905, p. 4, § 12, giving superior court jurisdiction of writs of habeas corpus, mandamus and quo warranto.

Syl. 13 (II, 762). Admiralty jurisdiction in territorial courts.

Approved in Allen v. Myers, 1 Alaska, 118, after applicant for patent has once initiated proceedings in land office under Rev. St., §§ 2325, 2326, independent equity suit to quiet title is not maintainable.

Syl. 14 (II, 763). Territorial courts not constitutional courts.

Approved in Ex parte Moran, 144 Fed. 598, upholding jurisdiction of circuit court of appeals in habeas corpus to inquire into power of Oklahoma territory court to imprison one convicted of capital crime; Wallace v. Adams, 143 Fed. 725, upholding jurisdiction of United States in Indian Territory over ejectment by Indian allottee against possessor of allotment; Welty v. United States, 14 Okl. 15, 76 Pac. 123, in trial of federal cases in territorial district court, territorial procedure prevails; Fuller etc. Co. v. Johnson, 8 Okl. 605, 58 Pac. 747, United States court of Indian Territory is not United States court within Okl. St. 1890, p. 930, § 2; United States v. Choctaw etc. R. R. Co., 3 Okl. 452, 41 Pac. 745, Rev. St., § 1001, exempting United States from giving bond on appeal, does not apply to appeals from

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territorial district to territorial supreme court; Burke v. Territory, 2 Okl. 515, 37 Pac. 835, Rev. St., § 725, limiting powers of United States court to summarily punish for contempt does not apply to territorial courts.

1 Pet. 591-603, 7 L. 275, TAYLOR v. RIGGS.

Syl. 1 (II, 775). Best evidence.

Approved in Security Trust Co. v. Robb, 142 Fed. 79, refusing copy of letter where adverse party not subpoenaed to produce original.

Syl. 4 (II, 776). Foundation for secondary evidence.

Approved in Jenkins v. Emmons, 117 Mo. App. 9, 94 S. W. 814, where contents of written instrument have been proven, party may testify as to its loss in suit against administrator.

Syl. 6 (II, 777). Contracts—Preceding conversations inadmissible.

Approved in Capell v. Fagan, 30 Mont. 512, 77 Pac. 56, applying rule to deed.

Syl. 8 (II, 777). Sufficiency of parol to prove written contract.

Approved in Capell v. Fagan, 30 Mont. 513, 515, 77 Pac. 56, 57, applying rule to deed.

1 Pet. 620-625, 7 L. 287, McDONALD v. SMALLEY.

Syl. 3 (II, 782). Contracts—Motives do not affect validity.

Approved in Bedford etc. Co. v. Oman, 134 Fed. 448, stranger to contract to maintain switch over private property, who is interested in maintenance of switch by railroad, cannot complain of contract as fraudulent merely because purchase price on sale of switch was paid in notes.

1 Pet. 640-654, 7 L. 295, BARRY v. COOMBE.

Syl. 3 (II, 785). Statute of frauds—Place of signature.

Approved in Delaware Ins. Co. v. Pennsylvania Ins. Co., 126 Ga. 388, 391, 55 S. E. 333, 335, upholding contract of fire insurance signed at place other than end.

Syl. 6 (II, 786). Evidence to remove ambiguity in writing.

Approved in Ismon v. Loder, 135 Mich. 351, 97 N. W. 771, upholding deed by corporation signed by its president and secretary whose signature had appended to it designation "Pres.," "Sec."

1 Pet. 655-669, 7 L. 302, ROSS v. BARLAND.

Syl. 2 (II, 788). Legal title prevails in ejectment.

Approved in United States v. Anderson, 194 U. S. 399, 48 L. 1039, 24 Sup. Ct. 716, United States is precluded from retaining, as against grantees of indemnity lands, sum collected from trespassers thereon for removal of stone during period of selection of lands to supply deficiency.

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Syl. 3 (II, 788). Ejectment—Practice.

Approved in Peyton v. Desmond, 129 Fed. 11, 63 C. C. A. 651, patent issued under homestead laws relates back to initiation of claim, and gives patentee right to recover value of timber wrongfully cut and removed from land after initiation of claim, and prior to issuance of patent.

1 Pet. 686-694, 7 L. 315, BIDDLE v. WILKINS.

Syl. 5 (II, 792). Administrator's suit—Profert of letters.

Approved in Moore v. Petty, 135 Fed. 673, 68 C. C. A. 306, executor may sue in another state to recover of his agent proceeds of sale of realty belonging to decedent's estate.

Syl. 7 (II, 793). Action on judgment by administrator.

Approved in Coram v. Ingersoll, 148 Fed. 176, judgment against ancillary administrator, in action on chose in action, deemed assets of estate in his jurisdiction, bars ancillary administrator in another jurisdiction from suing on same cause of action.

II PETERS.

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2 Pet. 1-24, 7 L. 327, PENNOCK v. DIALOGUE.

Syl. 2 (II, 795). Necessity for requests for instructions.

Approved in Chicago Live Stock Com. Co. v. Fix, 15 Okl. 42, 78 Pac. 317, following rule: Steel Rail Sup. Co. v. Baltimore etc. Ry. Co., 130 Fed. 435, 64 C. C. A. 635, exception to so much of charge as states that only question is (stated question), does not support assignment of error based on failure to submit another question on which no instruction asked.

Syl. 7 (II, 797). Patents—Prior public use.

Distinguished in Eastman v. Mayor etc. of N. Y., 134 Fed. 853, 69 C. C. A. 628, where inventor of fire-engine pump put device on engine of which he was engineer, where it was used for years, and shown to manufacturers, their placing it on other engines is not fraudulent.

2 Pet. 25-57, 7 L. 335, COLUMBIAN INS. CO. v. LAWRENCE.

Syl. 7 (II, 800). Insurer must disclose all facts.

Approved in Parsons, Rich & Co. v. Lane, 97 Minn. 113, 106 N. W. 492, condition in fire policy for unconditional ownership by insured and for ownership of lot on which building stands makes it incumbent on insured to disclose ground lease where no inquiries made; Tyree v. Virginia Ins. Co., 55 W. Va. 68, 104 Am. St. Rep. 983, 46 S. E.

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708, 66 L. R. A. 657, false statement by applicant to insurance agent that he is sole and absolute owner avoids policy.

2 Pet. 58-95, 7 L. 347, GARDNER v. COLLINS.

Syl. 3 (II, 804). Statutes—Intent gathered from words of act.

Approved in dissenting opinion in Irwin v. Irwin, 2 Okl. 220, 37 Pac. 560, majority holding act of Congress ratifying territorial law granting probate court jurisdiction in divorce cases did not deny power to repeal act.

Syl. 5 (II, 805). Succession—Heirs of the blood.

Approved in Finley v. Abner, 129 Fed. 736, 64 C. C. A. 262, under Kansas statute of descent which governs descent of allotments in Indian Territory, where Indian woman, whose parents were dead, died unmarried and without issue, but leaving half-brother, he inherited to exclusion of uncles and cousins.

2 Pet. 137-149, 7 L. 374, VAN NESS v. PACARD.

Syl. 2 (II, 812). Removal of fixtures by tenant.

Approved in Shafter Estate Co. v. Alvord, 2 Cal. App. 605, 84 Pac. 280, upholding right of lessee of game preserve to remove buildings during term; Hayward v. School District No. 9, 139 Mich. 542, 102 N. W. 1000, school district is owner of schoolhouse which it erects on leased land, and may remove same within reasonable time after termination of lease on contingency; Winans v. Beidler, 6 Okl. 605, 52 Pac. 405, homestead settler making improvements on government land, whose entry afterward canceled, may remove same after land awarded to adverse settler; Crocker v. Donovan, 1 Okl. 174, 30 Pac. 377, improvements made by homesteaders on their claims are taxable.

2 Pet. 150-156, 7 L. 379, BOYCE v. ANDERSON.

Syl. 2 (II, 815). Liability of slave carriers.

Approved in Lewis v. Pennsylvania etc. R. R. Co., 70 N. J. L. 135, 56 Atl. 129, carrier of livestock not liable for injuries to cattle caused by failure to feed and water them where contract provided that shipper should do so.

2 Pet. 157-169, 7 L. 381, THOMPSON v. TOLMIE.

Syl. 3 (II, 817). Judgments—Collateral attack.

Approved in Threadgill v. Colcord, 16 Okl. 470, 85 Pac. 710, applying rule to receiver's sale; Eddy v. People, 218 Ill. 616, 75 N. E. 1072, under Laws 1879, relating to police pensions, board of trustees in passing on right of applicant for pension acts in quasi-judicial capacity and its finding is binding.

Syl. 4 (II, 819). Collateral attack on judicial sale.

Approved in Clark v. Rossier, 10 Idaho, 359, 78 Pac. 360, applying rule to sale of mining claims.

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2 Pet. 201-215, 7 L. 397, HUNT v. WICKLIFFE.

Syl. 6 (II, 828). "Two months" does not mean eight weeks.

Approved in Bertwell v. Haines, 10 Okl. 471, 63 Pac. 702, term "month" in land contest statute means calendar month and not period of thirty days.

2 Pet. 245-252, 7 L. 412, WILLSON v. BLACKBIRD CREEK MARSH CO.

Syl. 2 (II, 832). Benefits to public through medium of individuals.

Approved in Pittsburg etc. Ry. Co. v. Wolcott, 162 Ind. 405, 69 N. E. 453, upholding Burns' Rev. St., §§ 4401-4410, relating to opening of streets.

Syl. 3 (II, 832). Commerce—State law conflicting with congressional.

Approved in Allen v. Reed, 10 Okl. 124, 60 Pac. 788, holding void territorial act regulating change of county seats.

Syl. 4 (II, 833). Regulation of navigation by states.

Approved in Manigault v. Springs, 199 U. S. 478, 482, 50 L. 277, 279, 26 Sup. Ct. 127, upholding state statute authorizing construction of dam across navigable stream to subserve drainage of lowlands; The Nonpariel, 149 Fed. 523, railroad maintaining bridge over Erie Canal with piers resting on cribs which extend over piers on canal sides without marking location is liable for damage by collision therewith; United States v. Union Bridge Co., 143 Fed. 390, 391, upholding 30 Stat. 1153, relating to alteration of bridges which Secretary of War decides obstruct navigation; Maine Water Co. v. Knickerbocker Steam Towage Co., 99 Me. 475, 59 Atl. 954, water pipe line across Kennebec river by authority of legislature and in accordance with plans authorized by Secretary of War is not unlawful obstruction; Crookston Waterworks etc. Co. v. Sprague, 91 Minn. 468, 98 N. W. 349, 64 L. R. A. 977, construing Gen. St. 1894, §§ 2385, 2386, relating to log dams; Kansas City etc. R. R. Co. v. Wiygul, 82 Miss. 231, 33 So. 967, 61 L. R. A. 578, railroad which, under grant from state, has built bridge over navigable stream, may repair same.

2 Pet. 253-317, 7 L. 415, FOSTER v. NEILSON.

Syl. 4 (II, 838). Individual rights under treaties.

Approved in In re Minook, 2 Alaska, 208, construing Russian treaty with reference to citizenship of half-breeds who have severed tribal relations.

Syl. 7 (II, 839). Treaties equivalent to statutes.

See 112 Am. St. Rep. 108, note.

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2 Pet. 318-326, 7 L. 437, BANK OF KENTUCKY v. WISTER.

Syl. 4 (II, 842). Assumpsit for bank deposit.

Approved in Retan v. Union Trust Co., 134 Mich. 8, 95 N. W. 1008, deposits in bank of moneys paid into court are not special deposits entitled to priority over others on insolvency of bank.

Syl. 6 (II, 843). Federal courts—Suits by holder of note.

Distinguished in Utah-Nevada Co. v. De Lamar, 133 Fed. 122, 66 C. C. A. 179, suit by assignee of oral contract to recover money due thereon cannot be maintained in federal court unless assignor could sue therein.

2 Pet. 358-369, 7 L. 450, AMERICAN FUR CO. v. UNITED STATES.

Syl. 2 (II, 847). Liquor in Indian country—Burden of proof.

Approved in State v. Barrett, 138 N. C. 640, 50 S. E. 510, upholding Laws N. C. 1903, prohibiting selling of liquor without license and making possession of liquor in quantities over quart prima facie evidence of his keeping it for sale.

2 Pet. 370-379, 7 L. 454, DANDRIDGE v. WASHINGTON'S EXECUTORS.

Syl. 4 (II, 850). Executor represents residuaries.

Approved in Rankin v. City of Big Rapids, 133 Fed. 672, 66 C. C. A. 568, where it had been determined in probate proceedings by receiver of insolvent national bank to establish claim for assessment on decedent's stock that decedent was owner, distributees are estopped to relitigate decedent's ownership in subsequent suit to recover subsequent assessment.

2 Pet. 380-416, 7 L. 458, SATTERLEE v. MATTHEWSON.

Syl. 2 (II, 850). Retrospective validating statute.

Approved in Lohrstorfer v. Lohrstorfer, 140 Mich. 556, 104 N. W. 144, act of 1905, amending act of 1897, relating to payment of fees on appeal, by providing for reinstatement of appeal dismissed for nonpayment of register's fees, is void as to appeals dismissed prior to amendment.

Syl. 4 (II, 852). Exercise of judicial functions by legislature.

Approved in Eddy v. People, 218 Ill. 616, 75 N. E. 1072, under Laws 1879, relating to police pensions, board of trustees in passing on application for pension acts in quasi-judicial capacity and its finding is binding.

Syl. 5 (II, 852). Retrospective laws valid unless contracts impaired.

Approved in Whitlock v. Hawkins, 105 Va. 250, 53 S. E. 403, upholding act of 1906, amending and re-enacting Code, c. 23, relating to assessment of land.

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2 Pet. 417-441, 7 L. 470, REYNOLDS v. M'ARTHUR.

Syl. 1 (II, 856). Retrospective construction of statutes.

Approved in United States v. Jackson, 143 Fed. 788, 32 Stat. 397, relating to allowance to prisoners for good time, did not apply to prisoners sentenced before act took effect.

2 Pet. 449-480, 7 L. 481, WESTON v. CITY COUNCIL OF CHARLESTON.

Syl. 1 (II, 857). Suit defined.

Approved in South Dakota etc. Ry. Co. v. Chicago etc. Ry. Co., 141 Fed. 580, proceeding by railroad to condemn right of way under South Dakota statute is removable where requisite diversity of citizenship and amount exist.

Syl. 2 (II, 858). Prohibition is suit.

Approved in State v. Chittenden, 127 Wis. 494, 107 N. W. 508, certiorari lies to review action of dental board in passing upon reputability of college under state statute.

Syl. 7 (II, 859). Right to tax unlimited.

Approved in Gay v. Thomas, 5 Okl. 10, 46 Pac. 581, upholding act of 1895, relating to taxation of personalty in unorganized country or reservation.

Syl. 10 (II, 861). State tax on government stock.

Approved in South Carolina v. United States, 199 U. S. 452, 466, 50 L. 266, 272, 26 Sup. Ct. 110, United States may exact license tax from selling agents of state which has taken charge of liquor business; Mosely v. State, 115 Tenn. 56, 57, 61, 86 S. W. 715, 716, 717, interest on United States bonds does not become taxable immediately upon being paid into hands of bondholder; dissenting opinion in Kingsley v. Merrill, 122 Wis. 202, 99 N. W. 1049, 67 L. R. A. 200, majority upholding Rev. St. 1898, § 1036, making debts due from solvent debtors subject to taxation.

Distinguished in Hibernia Savings etc. Soc. v. San Francisco, 200 U. S. 313, 50 L. 496, 26 Sup. Ct. 265, United States orders for interest accrued on registered government bonds are taxable by state in hands of owner.

(II, 857.) Miscellaneous. Cited in State v. Godfrey, 54 W. Va. 71, 46 S. E. 192, as to whether prohibition lies to enjoin prosecution under void ordinance.

2 Pet. 481, 7 L. 492, PRESIDENT ETC. BANK OF UNITED STATES v. WEISINGER.

Syl. 1 (II, 862). Death pending submission—Entry of order.

Approved in Teske v. Dettbarner, 70 Neb. 559, 98 N. W. 62, following rule.

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2 Pet. 492-526, 7 L. 496, BANK OF HAMILTON v. DUDLEY'S LESSEE.

Syl. 4 (II, 865). Repeal of law authorizing administrator's sales.

Approved in Scott v. Jenkins, 46 Fla. 529, 35 So. 105, following rule.

2 Pet. 527-542, 7 L. 508, BANK OF UNITED STATES v. OWENS.

Syl. 1 (II, 867). Usury defined.

Approved in Gunby v. Armstrong, 133 Fed. 433, 66 C. C. A. 627, construing contract of loan association with borrowing stockholder as not being usurious.

Syl. 2 (II, 868). Bank loan at ultra vires interest.

Approved in Urwan v. Northwestern Nat. Life etc. Co., 125 Wis. 360, 103 N. W. 1105, under Rev. St. 1898, § 1955o, prohibiting discriminatory contracts of insurance, where special agent's contract is issued, in violation of statute, as inducement to taking out of policy, insurer may sue for return of money paid in consideration of issuance of policy.

Syl. 6 (II, 870). Enforcement of illegal contracts.

Approved in Montgomery v. Whitbeck, 12 N. D. 392, 96 N. W. 329, holding void mutual insurance policy issued in disregard of statutes regulating same; Light v. Conover, 10 Okl. 737, 63 Pac. 968, no action can be maintained on lease for pasturage of cattle on Indian reservation made without approval of Indian agent; Garst v. Love, 6 Okl. 59, 55 Pac. 22, in suit for compensation under cattle pasturage contract, answer alleging pasture incloses government land states good defense; Kelly v. Courter, 1 Okl. 282, 30 Pac. 373, where one leases premises for sale of liquor, sale being illegal, tenant cannot recover for damage to liquor by landlord's breach of agreement to supply ice as agreed; dissenting opinion in Monahan v. Monahan, 77 Vt. 151, 59 Atl. 174, 70 L. R. A. 935, majority holding where complaint seeking to impress securities with trust alleges they were taken in defendant's name without his knowledge and issues are only as to title, relief not denied because securities placed in defendant's name to avoid taxation; Escondido Lum. etc. Co. v. Baldwin, 2 Cal. App. 608, 84 Pac. 285, arguendo.

2 Pet. 566-585, 7 L. 521, BEATTY v. KURTZ.

Syl. 1 (II, 875). What is valid dedication.

Approved in Corsicana v. Anderson, 33 Tex. Civ. 600, 78 S. W. 263, following rule.

Syl. 2 (II, 876). Charitable uses—Particular grantee unnecessary.

Approved in Penny v. Central Coal & Coke Co., 138 Fed. 774, where unincorporated religious society had had uninterrupted possession of land in controversy for thirty years, and had used it as its own under

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lost deed, it is presumed that title legally conveyed to trustees for its benefit.

Syl. 4 (II, 877). Grant of land afterward used for cemetery.

Limited in Ex parte McCall, 68 S. C. 492, 47 S. E. 974, church which has allowed members to bury dead in church lot for twenty years not enjoined, where cemetery much neglected and church about to be moved, from selling lot and removing bodies.

Syl. 6 (II, 878). Suit by members of religious society.

Approved in Bingle v. State, 161 Ind. 370, 68 N. E. 646, upholding indictment for larceny alleging property stolen was property of several persons named "as trustees of" church.

2 Pet. 595-612, 7 L. 531, ENGLISH v. FOXHALL.

Syl. 4 (II, 881). Relief under general prayer.

Approved in Lockhart v. Leeds, 195 U. S. 437, 49 L. 269, 25 Sup. Ct. 76, under bill averring title to mine acquired under relocation made in pursuance of alleged fraudulent conspiracy with complainant's partner, whereby partner was to fail to perfect original location, injunction against further mining may be granted.

2 Pet. 613-626, 7 L. 538, CHIRAC v. REINECKER.

Syl. 5 (II, 882). Ejectment against tenant bars landlord.

See 112 Am. St. Rep. 27, 32, note.

2 Pet. 627-663, 7 L. 542, WILKINSON v. LELAND.

Syl. 4 (II, 884). Law violating property rights.

Approved in King v. Hatfield, 130 Fed. 582, holding void West Virginia constitutional and statutory provisions relating to forfeiture of tracts of over one thousand acres; McKinster v. Sager, 163 Ind. 675, 106 Am. St. Rep. 268, 72 N. E. 856, 68 L. R. A. 273, holding void Acts 1903, p. 276, c. 153, making sales by merchant, except in due course of trade, void as to creditors unless certain conditions as to schedule of creditors complied with; Ex parte Anderson, 46 Tex. Cr. 390, 392, 81 S. W. 982, 983, city court has no jurisdiction to try an accused for alleged violation of state penal statute.

Syl. 5 (II, 886). Heir's title vests encumbered by liens.

See 112 Am. St. Rep. 1022, note.

Syl. 7 (II, 887). Act confirming void executor's sale valid.

Approved in Fuller v. Hager, 47 Or. 244, 83 Pac. 783, Laws 1899, p. 64, § 3, validating guardians' sales made to bona fide purchasers, cured failure of guardian to take statutory oaths before fixing time and place of sale.

Syl. 8 (II, 887). Validity of retrospective laws.

Approved in Lohrstrofer v. Lohrstrofer, 140 Mich. 556, 104 N. W. 144, act 1905, amending act of 1897, relating to payment of fees on

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appeal, by providing for reinstatement of appeals dismissed for non-payment of register's fees, is void as to appeals dismissed prior to amendment.

Syl. 9 (II, 889). Statutes construed according to intent.

Approved in Wadsworth v. Boysen, 148 Fed. 776, construing Act of Cong., March 3, 1905, ratifying agreement by which Wyoming Indians ceded, for disposal by government, lands in Wind River Reservation; Parshall v. United States, 147 Fed. 436, railway postal clerks cannot recover against government for expenses for bed and board while on regular run, in addition to fixed salary; United States v. Jackson, 143 Fed. 787, 32 Stat. 397, relating to allowance for good time, does not apply to prisoners sentenced before it took effect; Braithwaite v. Cameron, 3 Okl. 635, 38 Pac. 1086, legislature may provide for payment of compensation out of territorial treasury to stenographer employed by legislature.

III PETERS.

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3 Pet. 12-32, 7 L. 585, UNITED STATES v. BUFORD.

Syl. 1 (III, 9). Treasury transcripts as evidence.

Approved in United States v. Pierson, 145 Fed. 819, in action on Indian agent's bond, transcript of books and proceedings of Treasury Department was admissible, though it contained some items of credit or debit concerning which it was not competent evidence.

Syl. 2 (III, 9). State not barred by limitations.

See 101 Am. St. Rep. 151, 165, note.

Syl. 5 (III, 10). Assignment of claim to government.

See 101 Am. St. Rep. 183, note.

3 Pet. 43-56, 7 L. 596, WILLISON v. WATKINS.

Syl. 1 (III, 14). Tenant cannot dispute landlord's title.

Approved in Hagar v. Wikoff, 2 Okl. 584, 39 Pac. 282, one going into possession of town lot on public lands as tenant of one who has erected building cannot assert claim adverse to landlord till he surrenders premises.

Syl. 4 (III, 16). Tenant disclaiming tenure.

Approved in Stover v. Davis, 57 W. Va. 204, 205, 49 S. E. 1025, 1026, following rule; Dawson v. Falls City Boat Club, 136 Mich. 263, 99 N. W. 19, good faith is not element of adverse possession.

Syl. 5 (III, 18). Adverse possession by disclaimer of tenure.

Approved in Patterson v. Hewitt, 11 N. M. 42, 66 Pac. 565, 55 L. R. A. 658, Comp. Laws, 1897, §§ 2916, 2930, apply limitations

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to trusts founded on verbal agreements where defendant has not fraudulently concealed his cause of action, or its existence thereof from party entitled.

3 Pet. 99-192, 7 L. 617, INGLIS v. SAILORS' SNUG HARBOR.

Syl. 2 (III, 28). Wills—Designation of trustees by official character.

Approved in Thompson v. Hale, 123 Ga. 310, 51 S. E. 385, superior court may fill vacancies in trusteeship of trust for educational purposes where no provision made therefor.

Syl. 3 (III, 28). Bequest to society—Subsequent incorporation.

Approved in Stearns v. Newport Hospital, 27 R. I. 317, 62 Atl. 135, hospital established under Laws 1873, § 222, may administer trust under will for care of sick, injured or infirm poor persons.

Syl. 5 (III, 31). Devise on happening of future event.

Approved in Brigham v. Peter Bent Brigham Hospital, 134 Fed. 522, 67 C. C. A. 393, construing bequest to trustees to manage and invest income for certain period, at expiration of which they were to form corporation to which estate and accumulations should be transferred for purpose of founding hospital.

Syl. 7 (III, 32). Wills—Enforcement of testator's intent.

Approved in Speer v. Colbert, 200 U. S. 145, 50 L. 413, 26 Sup. Ct. 201, upholding bequest of sum not to exceed $5,000, to be equally divided between two named charitable institutions which testator directs to be made in event of invalidity of prior bequest for another purpose; Anderson v. Messinger, 146 Fed. 938, where testator declared if either of sons should die without lineal descendants, survivor should take, and if survivor had no descendants, half of all should go to testator's brother and a remainder to other brothers, sons acquired life estate in moiety.

Syl. 8 (III, 32). When trust created by will.

Approved in Speer v. Colbert, 200 U. S. 146, 50 L. 413, 26 Sup. Ct. 201, death or resignation of trustees named in will who are directed to pay and see to application of bequest to educational institution to be used for colonial research does not cause trust to fail; Gidley v. Lovenberg, 35 Tex. Civ. 210, 79 S. W. 835, upholding devise of fund for establishing home for bettering condition and comforting the unfortunate widows of certain city.

3 Pet. 193-208, 7 L. 650, EX PARTE WATKINS.

Syl. 2 (III, 38). Habeas corpus by federal court.

Approved in Ex parte Moran, 144 Fed. 600, 601, upholding jurisdiction of circuit court of appeals to issue habeas corpus to inquire into power of Oklahoma territorial court to imprison one convicted of capital crime.

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Syl. 8 (III, 41). When judgment of imprisonment a nullity.

Approved in Ex parte Stacey, 45 Or. 87, 75 Pac. 1061, following rule; In re Burkell, 2 Alaska, 110, when justice of peace added "at hard labor" to penalty, habeas corpus does not lie where hard labor not in fact being imposed as part of penalty; Ex parte Harlan, 1 Okl. 50, 27 Pac. 921, habeas corpus does not lie to review judgment or sufficiency of indictment where court had jurisdiction.

Syl. 9 (III, 43). Habeas corpus—Sufficiency of indictment.

Approved in Hyde v. Shine, 199 U. S. 83, 50 L. 97, 25 Sup. Ct. 760, refusing on habeas corpus to determine sufficiency of indictment for conspiracy.

Syl. 10 (III, 44). Judgment binding till reversed.

Approved in Cobe v. Ricketts, 111 Mo. App. 113, 85 S. W. 133, where, after suit to dissolve loan association was brought in federal court, state court transferred similar suit brought previously and federal court rendered decree for sale of assets, decree not collaterally attackable by one indebted to association on note in suit thereon by purchase of association's assets.

Syl. 15 (III, 48). Collateral attack on court-martial's judgment.

Approved in Hamilton v. McClaughry, 136 Fed. 447, where return to habeas corpus alleges that petitioner is held under judgment of military court-martial, burden is on respondent to show condition of war existed.

3 Pet. 210-221, 7 L. 655, BOYCE v. GRUNDY.

Syl. 2 (III, 49). Equity—Adequacy of law remedy.

Approved in United Cigarette etc. Co. v. Wright, 132 Fed. 197, following rule; Farwell v. Colonial Trust Co., 147 Fed. 482, upholding bill against vendor and corporation to rescind sale of stock, recover purchase price and to relieve complainant from liability to corporation on account of the stock; Wilhite v. Skelton, 149 Fed. 72, upholding specific performance of agreement to convey fifth interest in leasehold; Trade Dollar etc. Min. Co. v. Fraser, 148 Fed. 593, fact that defendants claiming right to take water from stream under plans approved by state would be compelled to condemn right of way over prior appropriator's lands does not prevent latter from enjoining works where construction would irreparably injure his prior rights; Castle Creek Water Co. v. City of Aspen, 146 Fed. 14, upholding specific performance where city has refused to perform its contract to purchase waterworks at price based on productive worth to be determined by appraisers; General Elec. Co. v. Westinghouse Elec. & Mfg. Co., 144 Fed. 466, where contract for manufacture and sale of electric equipment provided that in case of violation, violator should pay fifty per cent of regular sale price as liquidated damages, injunction will not lie to prevent

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violation of contract; Brewster v. Lanyon Zinc Co., 140 Fed. 816, upholding equity jurisdiction on bill to give effect to forfeiture of oil lease and for cancellation of lease as cloud on title; Big Six etc. Co. v. Mitchell, 138 Fed. 286, upholding bill to cancel mining lease as cloud on title enjoins lessee from mining; Glucose Ref. Co. v. City of Chicago, 138 Fed. 211, upholding sufficiency of bill to enjoin enforcement of illegal smoke ordinance providing fine for each separate violation; Manning v. Berdane, 135 Fed. 160, upholding federal equity jurisdiction of suit for cancellation of note obtained by fraud; Williams v. Neely, 134 Fed. 10, 69 L. R. A. 232, 67 C. C. A. 171, granting injunction to stay action at law on purchase money note until equitable defense of reduction for partial failure of consideration due to defect of title; Southern Pac. R. Co. v. United States, 133 Fed. 656, 66 C. C. A. 581, upholding equity jurisdiction over suit by United States against railroad and its mortgagees to determine what portion of lands erroneously patented to company have been sold to bona fide purchasers, and for cancellation of patents to lands not so disposed of; Brown v. Arnold, 131 Fed. 727, upholding suit for specific performance of stipulation that action at law which has passed to judgment shall abide final decision of another action; Gulf Red Cedar Co. v. Crenshaw, 138 Ala. 141, 35 So. 51, upholding jurisdiction over suit by tenant in common against cotenant for accounting for timber taken during term of years, discovery and restraint of waste; Barnes v. Newton, 5 Okl. 435, 48 Pac. 193, successful contestant before Land Department may enjoin adversary from further interfering with possession and further occupancy; Ritterhoff v. Puget Sound Nat. Bank, 37 Wash. 80, 107 Am. St. Rep. 791, 79 Pac. 602, enjoining collection of note alleged to be forgery; Stauffer v. Cincinnati etc. R. R. Co., 33 Ind. App. 358, 70 N. E. 543, arguendo.

Distinguished in dissenting opinion in Barnes v. Newton, 5 Okl. 446, 49 Pac. 1077, majority holding successful contestant before Land Department may enjoin adversary from further interfering with possession and further occupancy.

3 Pet. 242-268, 7 L. 666, SHANKS v. DUPONT.

Syl. 10 (III, 59). Construction of treaties.

Approved in In re Wyman, 191 Mass. 278, 77 N. E. 380, on death of Russian subject intestate, Russian vice-consul was entitled to administer estate to exclusion of public administrator.

3 Pet. 280-291, 7 L. 679, JACKSON v. LAMPHIRE.

Syl. 1 (III, 62). Supreme court—Invalidity of law.

Approved in Cantwell v. Missouri, 199 U. S. 602, 50 L. 329, 26 Sup. Ct. 749, following rule.

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Syl. 3 (III, 63). Recording acts make void unrecorded deeds.

Approved in Knights of Maccabees of the World v. Nitsch, 69 Neb. 375, 95 N. W. 627, upholding Comp. St. 1901, c. 43, § 112, requiring filing of proposed amendment to constitution or by-laws of fraternal beneficial societies with auditor of accounts as applied to certificate issued prior to law.

Syl. 5 (III, 64). Legislature regulates limitations.

Approved in Lamb v. Powder Riv. etc. Co., 132 Fed. 438, 67 L. R. A. 558, 65 C. C. A. 570, holding void Colorado act of 1899, limiting time for action on judgment as applied to action on sister state judgment rendered prior to passage of act.

3 Pet. 307-319, 7 L. 688, CANTER v. AMERICAN INS. CO.

Syl. 5 (III, 70). No appeal from costs decree.

Distinguished in Western Coal etc. Co. v. Petty, 132 Fed. 606, in action at law in circuit court judgment rendered on dismissal denying prevailing party costs is reviewable on writ of error.

3 Pet. 346-396, 7 L. 701, FINLAY v. KING.

Syl. 1 (III, 72). Conditions precedent and subsequent distinguished.

Approved in Rannels v. Rowe, 145 Fed. 300, condition in deed of land to railroad, that if road not built within three years lands to revert, was condition subsequent. See 102 Am. St. Rep. 366, 367, note.

Syl. 4 (III, 74). Wills construed according to intent.

Approved in Blinn v. Gillett, 208 Ill. 485, 100 Am. St. Rep. 234, 70 N. E. 707, construing bequest of profits of bank stock, with certain conditions in case of liquidation of bank; Missouri etc. Sanitarium v. McCune, 112 Mo. App. 338, 87 S. W. 85, where testatrix made several specific bequests in proper form, clause of will directing sale of stock to highest bidder and division of proceeds among specified legatees is bequest of proceeds and not of stock.

3 Pet. 398-410, 7 L. 719, FOWLE v. COMMON COUNCIL OF ALEXANDRIA.

Syl. 4 (III, 76). City not liable for nonfeasance.

Approved in Fifield v. Common Council of Phoenix, 4 Ariz. 287, 36 Pac. 917, 24 L. R. A. 430, city is not liable for injuries caused by discharge of fireworks because city authorities suspended for day ordinance prohibiting discharge of fireworks.

3 Pet. 433-458, 7 L. 732, PARSONS v. BEDFORD.

Syl. 4 (III, 83). Common law distinguished from equity.

Approved in In re E. T. Kenney Co., 136 Fed. 454, where creditors of bankrupt before bankruptcy assigned claims to committee

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in trust to purchase bankrupt's property and sell it for benefit of assignors, latter could not prove equitable interest as claims against estate though state statute abolished distinction beween law and equity.

Syl. 5 (III, 84). Jury not required in equity.

Approved in United States v. Luce, 141 Fed. 420, applying rule in suit to abate nuisance.

Syl. 6 (III, 84). Jury—Suit at common law defined.

Approved in Seliner v. McKay, 2 Alaska, 566, in action to quiet title where answer shows defendant was rightfully in possession and was ousted by plaintiff and wrongfully kept out of possession, defendant is entitled to jury trial; Chessman v. Hale, 31 Mont. 589, 79 Pac. 257, plaintiff in action for damages for maintenance of nuisance is entitled to jury though he also seeks injunction; Bradford v. Territory, 1 Okl. 370, 34 Pac. 67, proceeding by information in nature of quo warranto requires jury; dissenting opinion in Dorr v. United States, 195 U. S. 157, 49 L. 136, 24 Sup. Ct. 808, majority holding under Philippine temporary civil government right of trial by jury not included.

Syl. 8 (III, 85). Seventh amendment and judiciary act.

Approved in Illinois Cent. Ry. Co. v. Davies, 146 Fed. 248, assignment that verdict awarded excessive damages through prejudice and passion is not reviewable on appeal.

3 Pet. 459, 460, 7 L. 741, FARRAR v. UNITED STATES.

Syl. 3 (III, 88). Appearance cures defective service of process.

Approved in dissenting opinion in Fisher v. Crowley, 57 W. Va. 329, 50 S. E. 429, majority holding defect in summons not waived by pleading to merits after overruling of motion to quash to which exception taken.

IV PETERS.

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4 Pet. 1-101, 7 L. 761, CARVER v. JACKSON.

Syl. 2 (III, 92). Appeal—Instructions on facts not considered.

Approved in Pittsburgh Ry. Co. v. Bloomer, 146 Fed. 721, applying rule in action for damages against street railway for negligence.

Syl. 4 (III, 93). Recital of lease in deed binds parties.

Approved in Davis v. Moyles, 76 Vt. 33, 56 Atl. 176, petitions to legislature for grants of lands reciting lands confiscated from peti-

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tioner's father, and private acts granting lands and reciting confiscation, not evidence of confiscation, so as to show title in state at time of grant as against trespasser; Ronk v. Higginbotham, 54 W. Va. 143, 46 S. E. 130, applying rule in ejectment.

Syl. 6 (III, 98). State claiming under deed.

Approved in Clark v. Sayers, 55 W. Va. 526, 47 S. E. 318, where one conveys land with general warranty which at time he does not own, or title to which is defective, and afterward acquires good title, acquisition inures to grantee.

4 Pet. 102-107, 7 L. 796, EX PARTE BRADSTREET v. THOMAS.

Syl. 1 (III, 98). Mandamus to compel signing bill of exceptions.

Approved in Herren v. Merrilees, 7 Okl. 266, 54 Pac. 469, after bill of exceptions signed copy of motion for new trial certified to by clerk cannot be annexed.

4 Pet. 108-110, 7 L. 798, EX PARTE TILLINGHAST.

Syl. 1 (III, 101). Disbarment for contempt.

Approved in Bessette v. W. B. Conkey Co., 194 U. S. 337, 48 L. 1005, 24 Sup. Ct. 665, order of circuit court finding one not a party to suit guilty of contempt in violating restraining order, is reviewable on writ of error; State v. Mosher, 128 Iowa, 87, 103 N. W. 107, upholding jurisdiction of district court to revoke license of attorney.

4 Pet. 111-123, 7 L. 799, BOYCE v. EDWARDS.

Syl. 1 (III, 101). Drafts—Promise to accept.

Approved in Bank of Seneca v. First Nat. Bank, 105 Mo. App. 726, 78 S. W. 1093, bank having no notice of letter of credit cannot have check which it cashed applied in extinguishment of amount named in letter.

4 Pet. 124-138, 7 L. 804, UNITED STATES v. MORRISON.

Syl. 2 (III, 104). Following state statutory construction.

Approved in dissenting opinion in James v. Gray, 131 Fed. 414, 65 C. C. A. 385, majority holding loan made by wife to husband from her separate property is provable against his estate in bankruptcy, irrespective of state law respecting its enforceability.

4 Pet. 172-183, 7 L. 821, WILCOX v. PLUMMER.

Syl. 1 (III, 110). When limitations for negligence runs.

Approved in O'Connor v. Aetna Life Ins. Co., 67 Neb. 126, 93 N. W. 138, where one borrowed money to pay off mortgage and gave mortgage on same premises as security, and lender paid off mortgage without getting surrender and assignee thereof foreclosed, borrower's suit against lender for damages barred in five years after

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payment; Mast v. Sapp, 140 N. C. 539, 540, 541, 111 Am. St. Rep. 868, 53 S. E. 352, 5 L. R. A. (N. S.) 379, determining survival of action for injuries to house caused by breaking of reservoir in which accident owner killed.

4 Pet. 184-189, 7 L. 825, BARTLE v. COLEMAN.

Syl. 1 (III, 112). No remedy on illegal contract.

Approved in dissenting opinion in Monahan v. Monahan, 77 Vt. 152, 59 Atl. 174, 70 L. R. A. 935, majority impressing securities with trust where only issue raised was as to title, though complainant placed securities in defendant's name to avoid taxation.

4 Pet. 190-204, 7 L. 828, CALDWELL v. TAGGART.

Syl. 1 (III, 114). Necessary parties must be before court.

Approved in Lynch v. United States, 13 Okl. 158, 73 Pac. 1101, applying rule in suit to cancel townsite patent.

4 Pet. 205-231, 7 L. 833, LLOYD v. SCOTT.

Syl. 1 (III, 115). Usury—Necessity for intent.

Approved in Lusk v. Smith, 71 Kan. 555, 81 Pac. 175, where son received sum from mother stating he could get her ten per cent interest, and he deposited sum in bank as agent and gave his memorandum-book in which he credited her with sum, adding "to be loaned out," usurious agreement not presumed from payment of interest by son.

Syl. 6 (III, 117). Usurious contracts void as to strangers.

Distinguished in In re Worth, 130 Fed. 932, under Iowa Code, 1897, § 3041, creditors of bankrupt cannot set up defense of usury against claim of another creditor.

4 Pet. 232-286, 7 L. 842, VAN NESS v. CITY OF WASHINGTON AND THE UNITED STATES.

Syl. 2 (III, 118). Preliminary agreement urged in indenture.

Approved in Arion Knitting Mills v. United States etc. Guaranty Co., 137 N. C. 570, 50 S. E. 306, 70 L. R. A. 167, applying rule in construing fidelity bond.

4 Pet. 287-290, 7 L. 861, LA GRANDE v. CHOUTEAU.

Syl. 3 (III, 121). Specific performance on paying for surplus.

Approved in King v. Raab, 123 Iowa, 638, 99 N. W. 308, where five year lease of town lot gave option to purchase for specified sum during term, and city caused street to be paved at cost of abutting owners, lessee must assume cost of pavement on asking specific performance.

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(III, 119.) Miscellaneous. Distinguished in South Bound R. R. v. Burton, 67 S. C. 520, 46 S. E. 341, fee of streets in Columbia is in state.

4 Pet. 291-310, 7 L. 862, CONRAD v. NICOLL.

Syl. 1 (III, 119). Burden of proof of fraud.

Approved in Kessler v. Ensley, 141 Fed. 137, applying rule to purchase of property of corporation by director.

4 Pet. 331-348, 7 L. 876, GALT v. GALLOWAY.

Syl. 1 (III, 122). Equity does not relieve against trespassers.

Approved in dissenting opinion in Barnes v. Newton, 5 Okl. 460, 49 Pac. 1081, majority holding successful contestant before Land Department may enjoin adversary from further interfering with possession and further occupancy.

4 Pet. 349-365, 7 L. 882, RONKENDORFF v. TAYLOR.

Syl. 5 (III, 126). Publication once a week.

Approved in Forsman v. Bright, 8 Idaho, 472, 69 Pac. 475, publication of summons in weekly paper five consecutive weeks, first issue on July 18th and last on August 15th, is publication for one month as required by statute; Derby v. Dancey, 112 La. 894, 36 So. 796, summons and notice, by which abandonment of wife by husband is required to appear by Civ. Code, art. 145, must be given each calendar month.

4 Pet. 393-409, 7 L. 897, SPRATT v. SPRATT.

Syl. 1 (III, 128). Conclusion of naturalization proceedings.

Approved in Dolan v. United States, 133 Fed. 449, certified copy of record of court showing admission of alien to citizenship is "certificate of citizenship" within Rev. St., §§ 5425, 5427, making it an offense to use or aid another in using false certificate of citizenship; Tinn v. United States Dist. Atty., 148 Cal. 775, 84 Pac. 152, order admitting alien to citizenship cannot be set aside on motion after lapse of six months; State v. Weber, 96 Minn. 428, 105 N. W. 492, record of common pleas ordering certificate of naturalization to be issued constitutes a judgment; State v. Chittenden, 127 Wis. 505, 107 N. W. 512, dental college entitled to certiorari to determine its status among reputable colleges.

4 Pet. 410-465, 7 L. 903, CRAIG v. STATE OF MISSOURI.

Syl. 2 (III, 130). Exceptions on trial to court.

Approved in Streeler v. Sanitary Dist. of Chicago, 133 Fed. 131, 66 C. C. A. 190, where case is trial by court, admission or rejection of evidence not necessarily ground for reversal.

Syl. 9 (III, 133). Promise in consideration of illegal act is void.

Approved in Monahan v. Monahan, 77 Vt. 143, 59 Atl. 172, 70 L. R. A. 935, impressing securities with trust where only issue was

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as to title, though complainant placed securities in defendant's name to avoid taxation.

4 Pet. 466-479, 7 L. 922, HOLLINGSWORTH v. BARBOUR.

Syl. 2 (III, 135). Publication against unknown heirs.

Approved in Clapp v. Houg, 12 N. D. 606, 607, 102 Am. St. Rep. 589, 98 N. W. 712, 65 L. R. A. 757, holding void Codes 1899, § 6325, subd. 2, providing for appointment of administrator where death of person not satisfactorily proven, as applied to property of live person; Flournoy v. Bullock, 11 N. M. 101, 66 Pac. 549, 55 L. R. A. 745, arguendo.

4 Pet. 480-510, 7 L. 927, SOCIETY FOR THE PROPAGATION ETC. v. TOWN OF PAWLET.

Syl. 1 (III, 137). Corporations—General issue—Capacity to sue.

Approved in Leader Printing Co. v. Lowry, 9 Okl. 106, 59 Pac. 247, plaintiff corporation need not aver that it is corporation.

4 Pet. 514-565, 7 L. 939, PROVIDENCE BANK v. BILLINGS.

Syl. 2 (III, 143). Tax exemption not presumed.

Approved in New York v. State Board of Tax Commrs., 199 U. S. 36, 50 L. 74, 25 Sup. Ct. 715, upholding special franchise imposed by N. Y. Laws 1899, c. 712, as not impairing obligation of contracts by which right to construct and maintain street railways was granted in consideration of payment of certain amount; Kersey v. Terre Haute, 161 Ind. 474, 68 N. E. 1029, upholding license ordinance taxing vehicles using streets, but omitting street-cars, automobiles and vehicles of nonresidents; Lake Drummond Canal Co. v. Commonwealth, 103 Va. 345, 49 S. E. 508, on purchase of property and franchises of another corporation on foreclosure of trust deed, corporation cannot claim tax immunity granted to prior corporation. See 105 Am. St. Rep. 698, note.

Syl. 3 (III, 148). Object of incorporation.

Approved in dissenting opinion in Hale v. Henkel, 201 U. S. 85, 50 L. 670, 26 Sup. Ct. 370, majority holding protection against unreasonable searches cannot be invoked to justify refusal of officer of corporation to produce its books and papers in obedience to subpoena duces tecum; Fulkerson v. Taylor, 102 Va. 321, 46 S. E. 311, railroad acquiring imperfect title to land is governed by same principles as individuals in claiming compensation for value of improvements.

Syl. 4 (III, 149). Taxing power operates on all.

Approved in People v. Ronner, 185 N. Y. 291, 77 N. E. 1063, upholding Laws 1905, p. 2059, c. 729, relating to taxation of real estate mortgages.

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Syl. 5 (III, 149). Security against unwise legislation.

Approved in Michigan etc. R. R. Co. v. Powers, 201 U. S. 296, 50 L. 762, 26 Sup. Ct. 466, affirming Michigan R. R. Tax Cases, 138 Fed. 234, and upholding Mich. Pub. Acts, 1901, act No. 173, for taxation of railroad property at average rate of taxation imposed on other property; Eddy v. People, 218 Ill. 616, 75 N. E. 1072, under Laws 1879, relating to police pensions, board of trustees in passing on application for pension acts in quasi-judicial capacity and its finding is binding; Pryor v. Bryan, 11 Okl. 363, 66 Pac. 350, upholding act exempting from taxation property on Indian reservation attached to county for tax purposes, except for territorial and court funds.

V PETERS.

5 Pet. 1-80, 8 L. 25, CHEROKEE NATION v. GEORGIA.

Syl. 1 (III, 153). Status of Indian tribe.

Approved in Buster v. Wright, 135 Fed. 950, 68 C. C. A. 505, upholding power of deportation from Creek nation of person not paying permit tax; Labadie v. United States, 6 Okl. 413, 51 Pac. 670, act of 1888, punishing person cutting standing timber on Indian reservation, applies to tribal Indian cutting timber for speculative purposes.

Syl. 5 (III, 155). Indian occupancy like fee simple.

Approved in Winters v. United States, 143 Fed. 748, portion of waters of Milk river having been reserved by treaty for Indians cultivating reservation, grantees of lands outside reservation could not acquire exclusive right to use all waters of river for irrigation under desert land act.

5 Pet. 99-114, 8 L. 60, UNION BANK OF GEORGETOWN v. GEARY.

Syl. 6 (III, 159). Relinquishment of right to defense is consideration.

Approved in Moore v. First Nat. Bank of Florence, 139 Ala. 609, 36 So. 781, forbearance by debtor to interpose defense to action by creditor is consideration for agreement by creditor to pay debtor's debt to third person; Duck v. Antle, 5 Okl. 156, 47 Pac. 1057, answer in suit on note that it was given as consideration for dismissal of contest of homestead entry, which was prosecuted only to extort money, states good defense.

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5 Pet. 115-130, 8 L. 66, UNITED STATES v. LINGEY.

Syl. 2 (III, 160). United States may contract.

Approved in Smith v. United States, 5 Ariz. 64, 45 Pac. 344, where bond of receiver of public moneys of land district was increased by direction of President over amount required by statute, it was not void; Dudley v. Rice, 119 Wis. 100, 95 N. W. 937, where bond of guardian of lunatic was conditioned to pay over amount found due on settlement, it was enforceable as voluntary bond, though court had no jurisdiction of guardianship proceedings.

Syl. 4 (III, 161). Bond exacted for public officer.

Approved in Commissioners of Logan Co. v. Harvey, 6 Okl. 632, 52 Pac. 403, holding void bond exacted of official where statute did not require bond as condition precedent to discharge of duties.

Distinguished in United States Fidelity etc. Co. v. United States, 150 Fed. 553, 554, bond required from Indian agent containing provisions not required by law not void when conditions not in violation of law.

5 Pet. 151-159, 8 L. 79, HENDERSON v. GRIFFIN.

Syl. 1 (III, 164). Following state statutory construction.

Distinguished in Davis v. Commonwealth Land etc. Co., 141 Fed. 716, where, pending suits to quiet title in federal court which involved question of boundary, replevin to recover logs begun in state court and issues framed to cover boundaries, and owners not parties thereto, state decision not binding on federal court.

5 Pet. 190-223, 8 L. 92, EX PARTE CRANE.

(III, 166.) Miscellaneous. Cited in Cassett v. Mitchell Coal & Coke Co., 150 Fed. 43, as to discretionary right to permit amendments or grant new trials.

5 Pet. 224-232, 8 L. 105, YEATON v. LYNN.

(III, 168.) Miscellaneous. Cited in Leahy v. Haworth, 141 Fed. 854, foreign executor may sue in federal court to foreclose mortgage belonging to testator's estate, and subsequent taking out of ancillary letters in local jurisdiction relates back to filing of bill.

5 Pet. 233-247, 8 L. 108, PATTERSON v. WINN.

Syl. 1 (III, 169). What constitutes our common law.

Approved in In re Burkell, 2 Alaska, 118, stealing of dog is larceny; Valentine v. Roberts, 1 Alaska, 541, issuance and service of order of arrest in civil action on Sunday is void; Johnson v. Union Pac. Coal Co., 28 Utah, 58, 76 Pac. 1092, 67 L. R. A. 506, construing Rev. St. Wyo. 1899, § 2695, adopting common law.

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5 Pet. 264-283, 8 L. 120, CATHCART v. ROBINSON.

Syl. 2 (III, 172). Specific performance—Fraud—Unreasonableness.

Approved in Marks v. Gates, 2 Alaska, 527, refusing to specifically enforce grubstake contract as vague, uncertain, unjust and perpetual; Schneider v. Schneider, 125 Iowa, 16, 98 N. W. 164, refusing specific performance of contract to sell realty between parties in fiduciary relation where contract obtained by fraud.

Syl. 4 (III, 172). Unfairness giving right to equitable relief.

Approved in Ferguson v. Blackwell, 8 Okl. 498, 58 Pac. 650, following rule.

Syl. 6 (III, 173). Equity—Decree as to legal matters.

Approved in Marthinson v. King, 150 Fed. 54, denying specific performance of option to purchase cross-tie outfit where seller sold direct to buyer's vendee; Clinton v. Shugart, 126 Iowa, 188, 101 N. W. 789, where, under contract for conveyance of land in futuro, vendor was to pay taxes until conveyance, and he failed so to do and vendee tendered purchase price less taxes on day contract matured, vendee entitled to specific performance; Lowry v. Mitchell, 14 Okl. 248, 78 Pac. 381, defendant in forcible entry and detainer may plead former judgment in suit to enjoin defendant from interfering with plaintiff's possession, which allowed defendant possession pending further hearing; dissenting opinion in Hawley v. Griffin, 121 Iowa, 703, 97 N. W. 90, majority holding where heirs of deceased owner on securing vacation of decree in suit to quiet title by grantees in tax deed against owner, who was insane and did not appear, cannot defend suit by setting up right of redemption conferred by Code, §§ 892, 893.

Syl. 7 (III, 173). Construction of adopted statutes.

Approved in Johnson v. Union Pac. Coal Co., 28 Utah, 57, 76 Pac. 1092, 67 L. R. A. 506, construing Rev. St. Wyo. 1899, § 2695, adopting common law.

5 Pet. 284-291, 8 L. 127, NEW JERSEY v. NEW YORK.

Syl. 2 (III, 175). Equity—Service of subpoena.

Approved in dissenting opinion in Henry v. State, 87 Miss. 95, 39 So. 884, majority holding under constitution governor cannot sue in name of state.

5 Pet. 292-303, 8 L. 130, SMITH v. UNITED STATES.

Syl. 9 (III, 177). Treasury transcript as evidence.

Approved in United States v. Pierson, 145 Fed. 817, in action on bond of Indian agent, introduction of duly certified transcript of books and proceedings of treasury department established prima facie case for government.

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5 Pet. 319-357, 8 L. 140, CLARK v. COURTNEY.

Syl. 1 (III, 178). Proof of handwriting of dead witness.

Approved in Keely v. Moore, 196 U. S. 41, 49 L. 379, 25 Sup. Ct. 169, applying rule to proof of execution of will.

Syl. 5 (III, 179). Adverse possession—Owner's possession of part.

Approved in United States Min. Co. v. Lawson, 134 Fed. 772, 67 C. C. A. 587, bill to quiet title alleging possession and ownership of mining claim in complainant is not insufficient, because it also shows that defendant has through underground workings wrongfully entered and removed ore beneath surface of claim.

Syl. 7 (III, 179). Possession under deed—Limits.

Approved in Haggart v. Ranney, 73 Ark. 353, 84 S. W. 706, following rule.

5 Pet. 358-372, 8 L. 154, TAYLOE v. THOMSON.

Syl. 8 (III, 182). Statutes regulating judgment liens—Rules of property.

Approved in dissenting opinion in Woodruff v. Wallace, 3 Okl. 381, 41 Pac. 366, majority holding district court may, by injunction, give exclusive possession to successful contestant before land office.

5 Pet. 373-389, 8 L. 159, FARRAR v. UNITED STATES.

Syl. 1 (III, 182). Surety not liable beyond penalty.

Approved in Board of Education v. National Surety Co., 183 Mo. 184, 82 S. W. 75, in action on bond to secure performance of building contract, judgment for full amount of bond with interest is erroneous.

Distinguished in Greer v. McNeal, 11 Okl. 541, 69 Pac. 898, sureties on administrator's bond are liable for all moneys shown on final settlement to have come into his hands.

Syl. 4 (III, 183). Surety—Liability for past misconduct.

Approved in United States etc. Co. v. Fultz, 76 Ark. 415, 89 S. W. 95, where, as condition for doing business, insurance company must give bond for prompt payment of claims, and bond dated March 1, 1900, for one year was not approved until March 16th, it covered fire occurring March 2, 1900; Lake Co. v. Neilon, 4 Or. 17, 74 Pac. 213, applying rule to sureties on tax collector's bond.

5 Pet. 390-397, 8 L. 166, SHANKLAND v. MAYOR ETC. OF WASHINGTON.

Syl. 4 (III, 186). Parol evidence to vary writing.

Approved in Blue Mt. Iron etc. Co. v. Portner, 131 Fed. 60, 65 C. C. A. 295, where order of court appointing receiver for corporation was in writing, parol evidence of judge who made order was inadmissible to show grounds thereof; Gill v. General Electric Co., 129

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Fed. 351, 64 C. C. A. 99, where series of writings intended to embody entire contract from which it appeared that one of defendants was joint contractor, parol evidence inadmissible to vary his connection therewith.

5 Pet. 398-401, 8 L. 168, HINDS v. VATTIER.

Syl. 2 (III, 186). Judicial notice of state laws.

See 113 Am. St. Rep. 873, note.

5 Pet. 402-448, 8 L. 170, BRADSTREET v. HUNTINGTON.

Syl. 1 (III, 187). Disseisin—Deed by one without title.

See 109 Am. St. Rep. 612, note.

5 Pet. 457-469, 8 L. 190, HAWKINS v. BARNEY.

Syl. 1 (III, 190). Limitations—Reasonableness of time.

Approved in Lamb v. Powder Riv. etc. Co., 132 Fed. 438, 67 L. R. A. 558, 65 C. C. A. 570, Colorado act of 1899, prescribing limitations on actions on foreign judgments, is void as applied to action on foreign judgment based on contract rendered prior to passage of action.

Syl. 6 (III, 192). Burden of proof—Exception in deed.

Approved in Davis v. Commonwealth Land etc. Co., 141 Fed. 733, applying rule in suit to quiet title.

5 Pet. 470-478, 8 L. 195, LEWIS v. MARSHALL.

Syl. 6 (III, 193). Bible entries to prove death.

Approved in Collins v. German-American etc. Assn., 112 Mo. App. 219, 220, 86 S. W. 894, admitting Irish church baptismal record as evidence of pedigree and of entries therein though party making entries is dead; Murray v. Supreme Hive, L. O. T. M., 112 Tenn. 680, 80 S. W. 831, reports of boards of health and census reports are competent evidence on questions of age and pedigree on hearing of complaint for expulsion from benefit society.

5 Pet. 485-494, 8 L. 200, PEYTON v. SMITH.

Syl. 3 (III, 194). Tenant cannot contest landlord's possession.

Approved in Stover v. Davis, 57 W. Va. 204, 49 S. E. 1026, following rule.

Syl. 6 (III, 195). Forcible entry judgment for defendant.

See 112 Am. St. Rep. 40, note.

Syl. 7 (III, 195). Possession of tenant is landlord's.

Approved in Hagar v. Wikoff, 2 Okl. 585, 39 Pac. 282, one going into possession of town lot on public land as tenant of one who has erected building thereon cannot assert claim adverse to landlord until vacation of premises.

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5 Pet. 495-504, 8 L. 204, FOWLES v. LAWRSON.

Syl. 1 (III, 196). Equity jurisdiction over accounts.

Approved in Hosier Constr. Co. v. National Bank of Commerce, 35 Ind. App. 276, 73 N. E. 1008, action to recover for goods sold is at law and triable by jury, though complaint alleges defendant is entitled to certain credits, which sum cannot be stated because unknown to plaintiff, and concludes with prayer for accounting.

Syl. 2 (III, 197). Objection to jurisdiction raised sua sponte.

Approved in Allen v. Myers, 1 Alaska, 117, after applicant for patent has initiated proceedings in land office under Rev. St., §§ 2325, 2326, independent suit to quiet title is not maintainable.

5 Pet. 518-528, 8 L. 212, SMITH v. UNION BANK OF GEORGETOWN.

Syl. 1 (III, 198). Law governing distribution of estates.

Approved in Lewis v. Rutherford, 71 Ark. 220, 72 S. W. 374, where on death of nonresident leaving property here, administrators appointed in both states, probate court here could not order ancillary administrator to pay to primary administrator assets so that all creditors would receive equal percentage of debts.

Syl. 2 (III, 198). Goods within state subject to its laws.

Approved in Manley v. Mayer, 68 Kan. 383, 75 Pac. 552, upholding Administrator's Act, § 203, relative to enforcing of contracts of nonresident decedents who owned realty in Kansas, by attachment in suit against nonresident executor; Cooper v. Philadelphia Worsted Co. (Lees v. Harding etc. Co.), 68 N. J. Eq. 625, 60 Atl. 353, contract with reference to title to machinery situated in another state made there between resident thereof and New Jersey corporation, and is to be there performed, is governed by law of that state.

5 Pet. 529-579, 8 L. 216, WINSHIP v. BANK OF UNITED STATES.

Syl. 2 (III, 199). Partner's authority to borrow.

Approved in Union Nat. Bank v. Neill, 149 Fed. 716, upholding liability of firm to bona fide holder on accommodation note signed by member in firm name.

5 Pet. 675-717, 8 L. 268, SHEPPARD v. TAYLOR.

Syl. 1 (III, 209). Admiralty—Lien on proceeds of vessel.

Approved in The Conveyor, 147 Fed. 591, 592, seamen having liens for wages on vessel which was sunk may enforce same against insurance money paid on account of loss, subject only to claims for salvage, where proceeds of sale of vessel are insufficient to pay same; Bank of British N. A. v. Freights etc. of Hutton, 137 Fed. 538, 70 C. C. A. 118, where bank had maritime lien on freights of certain

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vessels for advances, it was entitled to enforce same in admiralty in rem, regardless of fact that it also had lien enforceable in equity.

5 Pet. 718-723, 8 L. 285, POTTER v. GARDNER.

(III, 212.) Miscellaneous. Cited in Johnson v. Georgia Loan etc. Co., 141 Fed. 597, bona fide purchaser must allege and prove want of notice and actual payment of purchase price independently of recitals in deed.

VI PETERS.

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6 Pet. 8-19, 8 L. 299, UNITED STATES BANK v. BANK OF WASHINGTON.

Syl. 2 (III, 213). Restoration on reversal of judgment.

Approved in The Eliza Lines, 132 Fed. 244, 65 C. C. A. 538, one who acted as agent for party in obtaining erroneous judgment directing sale of cargo, but who was not party to record and had no personal interest in suit, cannot be held in damages as tort-feasor on account of sale; Chambliss v. Hass, 125 Iowa, 491, 101 N. W. 155, 68 L. R. A. 126, where defendant appealed and judgment affirmed, and paid on execution, it is no ground for denial of new trial for newly discovered evidence.

Syl. 5 (III, 215). Reversal after execution.

Approved in Embry v. Galbreath, 110 Tenn. 301, 75 S. W. 1017, agent employed by grantor under trust deed to collect rents is not affected by notice that purchaser at foreclosure claimed property and would hold agent for rents collected; North Chicago St. R. Co. v. North Chicago Union Tr. Co., 150 Fed. 628, arguendo.

Syl. 6 (III, 216). Effect of reversal on rights.

Approved in Harrigan v. Gilchrist, 121 Wis. 441, 99 N. W. 1009, applying rule where amount allowed receiver for attorney's fee was reduced.

6 Pet. 29-40, 8 L. 308, UNITED STATES v. BANK OF NORTH CAROLINA.

Syl. 3 (III, 217). "Due" means owing.

Approved in Pope v. Matthews, 125 Ga. 347, 54 S. E. 154, construing act of 1905, requiring all taxes due state and county by persons residing in or on property in new county to be paid to collector of county from which territory taken.

Syl. 5 (III, 218). Statutory construction—Long acquiescence.

Approved in Pitts v. Logan County, 3 Okl. 740, 41 Pac. 591, holding void territorial act regulating accounting of fees of district court clerks.

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6 Pet. 51-60, 8 L. 316, UNITED STATES BANK v. DUNN.

Syl. 2 (III, 221). Parol to vary writing.

Approved in Earle v. Enos, 130 Fed. 470, parol agreement by bank, made at time of delivery of accommodation note and its discount by bank, that it would not look to maker for payment, cannot be shown to defeat action on note.

6 Pet. 61-67, 8 L. 320, MILLER v. McINTYRE.

Syl. 2 (III, 225). Limitations—Amendment adding new parties.

Approved in United States v. Martinez, 195 U. S. 473, 49 L. 283, 25 Sup. Ct. 80, petition in action under Indian depredation act in which wrong alleged to have been done by particular tribe cannot be amended after expiration of three year limitation prescribed by act, by stating different tribe as wrongdoer.

6 Pet. 68-85, 8 L. 322, SMITH v. BELL.

Syl. 1 (III, 227). Testator's intention prevails.

Approved in Anderson v. Messinger, 146 Fed. 938, construing will which declared that if either of testator's sons died without issue, survivor should take his estate, and if survivor died without lineal descendants, then estate divided among brother and sisters of testator.

Syl. 2 (III, 229). Wills—Construction of ambiguous expressions.

Approved in Burnes v. Burnes, 137 Fed. 792, 70 C. C. A. 357, where will devised property to brothers and expressed desire that they should adopt testator's children as his heirs, so that they would share equally with their children, no trust in favor of children created.

Syl. 4 (III, 230). Wills—Life estate.

Approved in Coats v. Harris, 9 Idaho, 466, 75 Pac. 245, will giving to wife life estate and son all property after her death empowers son to convey to mother and her heirs and assigns, property to become his after her death; dissenting opinion in Meyer v. Weiler, 121 Iowa, 62, 65, 95 N. W. 258, 259, majority holding bequest to wife of all property reciting intention to make her sole residuary legatee and owner, but conditioned that part remaining on her death should go to their heirs, created fee in wife and conditional limitation was void.

Distinguished in Widows' Home v. Lippardt, 70 Ohio St. 281, 287, 288, 289, 290, 71 N. E. 772, 773, 774, will giving wife all estate, and providing that after her death if there is anything left it shall be distributed in certain way, gives widow power to convey fee.

Syl. 6 (III, 232). Wills—Primary intent controls.

Approved in Wheeler v. Long, 128 Iowa, 646, 105 N. W. 162, where will gave daughter realty but subsequent paragraphs provided that if she died before reaching maturity property to be divided between others, but if she married before maturity she should come into full control, devise not reduced to life estate.

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6 Pet. 95-101, 8 L. 332, PEIRSOLL v. ELLIOTT.

Syl. 2 (III, 235). Cancellation of deed void on face.

Distinguished in Shewalter v. Lexington, 143 Fed. 166, where suit was brought in federal court to quiet title as against street improvement certificates amounting to less than $2,000, amount of certificates fixed jurisdictional amount.

6 Pet. 124-140, 8 L. 342, SICARD v. DAVIS.

Syl. 1 (III, 237). Object of acknowledgment of deeds.

Approved in Whalon v. North Platte Canal etc. Co., 11 Wyo. 348, 71 Pac. 1000, unacknowledged and unrecorded transfers of permits to construct irrigation ditch pass title as between parties.

Syl. 6 (III, 239). Limitations—Amendment adding new cause.

Approved in Patillo v. Allen West Com. Co., 131 Fed. 681, 65 C. C. A. 508, where complaint stated facts from which there is presumption of promise to pay balance of account stated, and demanded judgment therefor, amendment adding averment of promise to pay balance presents no new cause of action; Covington v. Berry, 76 Ark. 464, 88 S. W. 1006, where second action of ejectment instituted after nonsuit in first is based on title acquired by plaintiff subsequent to commencement of first action, limitations do not cease to run against second action till commencement thereof.

6 Pet. 141, 142, 8 L. 348, UNITED STATES v. PAUL.

Syl. 1 (III, 239). Federal crimes—State laws.

Approved in Hollister v. United States, 145 Fed. 778, 779, upholding 32 Stat. 793, adopting punishment provided for like offenses in South Dakota, for offenses on Indian reservation.

6 Pet. 143-150, 8 L. 349, OLIVER v. ALEXANDER.

Syl. 4 (III, 240). Admiralty appeal—Joinder of joint libelants.

Approved in The Joseph B. Thomas, 148 Fed. 767, following rule; Feely v. Bryan, 55 W. Va. 592, 47 S. E. 310, where several creditors with separate demands attack mortgage as preference, and decree adjudges property to be for benefit of all insolvent's creditors, sums due complainants cannot be added to give appellate jurisdiction.

6 Pet. 172-204, 8 L. 359, COX v. UNITED STATES.

Syl. 1 (III, 243). Appeal by principal and surety.

Approved in Grunberg v. United States, 145 Fed. 84, arguendo.

6 Pet. 216, 217, 8 L. 375, EX PARTE ROBERTS.

Syl. 1 (III, 247). Mandamus to set aside default.

See 98 Am. St. Rep. 901, note.

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6 Pet. 218-249, 9 L. 376, GRANT v. RAYMOND.

Syl. 3 (III, 247). Correction of defective patent.

Approved in Thomson-Houston Electric Co. v. Black River Tr. Co., 135 Fed. 766, 68 C. C. A. 461, though changes in description in specification of reissued patent are not material, and claims are identical with some of those of original patent, such facts do not impeach their validity.

Syl. 4 (III, 248). Construction of patent laws.

Approved in Cortelyou v. Chas. Eneu Johnson & Co., 138 Fed. 114, owner of patent for rotary neostyle, used for stencil duplication, may sell machines under restriction that they be used only with paper and ink made by owner; dissenting opinion in Continental Paper Bag Co. v. Eastern Paper Bag Co., 150 Fed. 747, majority holding void Liddell patent No. 558,969, for paper-bag machine; Bobbs-Merril Co. v. Straus, 139 Fed. 169, arguendo.

6 Pet. 291-301, 8 L. 402, GREEN v. NEAL.

Syl. 3 (III, 257). Following change in state statutory construction.

Approved in Yocum v. Parker, 134 Fed. 212, 67 C. C. A. 227, applying rule in construing devise of land.

6 Pet. 302-316, 8 L. 406, GREENLEAF v. BIRTH.

Syl. 5 (III, 259). Ejectment—Burden of proof.

Approved in Robinson v. Lowe, 56 W. Va. 312, 49 S. E. 252, and Altschul v. Casey, 45 Or. 190, 76 Pac. 1085, both following rule; Davis v. Commonwealth Land etc. Co., 141 Fed. 733, applying principle in suit to quiet title.

6 Pet. 323-327, 7 L. 414, NEW JERSEY v. NEW YORK.

Syl. 1 (III, 261). Demurrer is appearance.

Approved in United States v. Griefen (Sayre etc. Co. v. Griefen), 72 N. J. L. 3, 60 Atl. 513, filing of demurrer waives objection to jurisdiction over person; Groel v. United Elec. Co., 68 N. J. Eq. 250, 59 Ala. 641, under Chancery Act, § 3, plea by foreign corporation in suit in which personal decree sought, reciting that defendant appears by officers solely to object to jurisdiction, is sufficient.

6 Pet. 328-347, 8 L. 415, BOARDMAN v. REED.

Syl. 1 (III, 261). Hearsay evidence to prove boundaries.

Approved in Ivey v. Cowart, 124 Ga. 162, 110 Am. St. Rep. 163, 52 S. E. 438, following rule.

Syl. 9 (III, 264). Repugnant call in patent.

Approved in United States v. Utah etc. Stage Co., 199 U. S. 423, 50 L. 255, 26 Sup. Ct. 69, increase in service required on mail route as result of establishment of new distributing station, amounting to

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three hundred thousand miles of additional transfer service, cannot be required by postmaster without extra compensation; American Bonding Co. v. Pueblo Inv. Co., 150 Fed. 27, construing lessee's agreement and bond to install heating plant and to pay for same to end that no lien should be fastened on property; United States etc. Co. v. Board of Commrs., 145 Fed. 148, construing fidelity bond given by cashier of bank made depository of county funds; Luhrig Coal Co. v. Jones etc. Co., 141 Fed. 622, construing contract of sale of coal for future delivery.

6 Pet. 389-403, 8 L. 437, WATTS v. WADDLE.

Syl. 6 (III, 271). Relief granted under general prayer.

Approved in Ratliff v. Sommers, 55 W. Va. 37, 46 S. E. 715, determining right to amend bill to bring in necessary party as shown by evidence.

Syl. 7 (III, 271). Compelling conveyance of extraterritorial lands.

Approved in State v. District Court, 94 Minn. 372, 102 N. W. 870, action to cancel contract for sale of land on ground of fraud and for recovery of purchase price paid before fraud discovered is transitory.

6 Pet. 404-430, 8 L. 443, McLANE v. UNITED STATES.

Syl. 2 (III, 271). Release of forfeiture.

Approved in Marvin v. Trout, 199 U. S. 225, 50 L. 162, 26 Sup. Ct. 31, upholding Ohio Rev. St., § 4275, authorizing action to subject building knowingly permitted to be used for gambling purposes to payment of judgment obtained by informer for recovery of money lost there at play.

6 Pet. 431-444, 8 L. 452, CINCINNATI v. WHITE.

Syl. 5 (III, 275). Dedication—Fee in original owner.

Approved in Nelson v. Randolph, 222 Ill. 538, 78 N. E. 916, under Rev. Laws 1833, p. 599, § 1, providing that plats of towns be made by county surveyor, plat not made by surveyor does not affect dedication of streets; Anderson v. Messinger, 146 Fed. 948, arguendo.

Syl. 6 (III, 275). Owner cannot revoke dedication.

Approved in Wilkins v. Chicago etc. R. R. Co., 110 Tenn. 450, 75 S. W. 1032, arguendo.

Syl. 7 (III, 278). Construction of dedications.

Cited in Lomax v. Phillips, 113 La. 858, 37 So. 780, arguendo.

See 106 Am. St. Rep. 239, note.

Syl. 10 (III, 282). Ejectment by owner of dedicated land.

Approved in Conradt v. Miller, 2 Alaska, 436, injunction lies to prevent erection of wharves or warehouses by private persons on public highway or navigable streams in front of plaintiff's property, where he shows special injury.

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Distinguished in Bork v. United N. J. etc. Co., 70 N. J. L. 269, 103 Am. St. Rep. 808, 57 Atl. 413, 64 L. R. A. 836, owner of fee of land subject to easement of public highway may maintain ejectment against intruder who appropriates same to purpose foreign to easement.

6 Pet. 470-497, 4 L. 467, UNITED STATES v. NOURSE.

Syl. 5 (III, 286). Appeal—Dismissal for want of jurisdiction.

Approved in Miltimore v. Hoffman, 125 Wis. 562, 104 N. W. 842, where appeal from justice's court was perfected and circuit court found justice had no jurisdiction, it was its duty to dismiss action.

6 Pet. 498-514, 8 L. 477, BARCLAY v. HOWELL'S LESSEE.

Syl. 1 (III, 286). Ejectment—Description of premises.

See 101 Am. St. Rep. 118, note.

Syl. 2 (III, 286). Map as evidence of dedication.

Approved in Evans v. Blankenship, 4 Ariz. 315, 39 Pac. 813, determining dedication of land as public square.

Syl. 6 (III, 289). Property dedicated to particular use—Reverter.

Approved in McAlpine v. Chicago etc. Ry. Co., 68 Kan. 214, 75 Pac. 75, 64 L. R. A. 85, following rule.

Syl. 10 (III, 291). Dedication—Fee remains in land owner.

See 101 Am. St. Rep. 104, note.

6 Pet. 515-597, 8 L. 483, WORCESTER v. GEORGIA.

Syl. 14 (III, 297). Construction of Indian treaties.

Approved in Conway v. United States, 149 Fed. 266, where Ponca squaw selected allotment and before approval thereof she married another allottee, and later each made separate lieu applications and by mistake patent issued to husband as head of family, she was entitled to half of land; Winters v. United States, 143 Fed. 746, under Indian treaty of 1888, Indians residing on reservation were entitled to portion of waters of Milk river for irrigation of reservation lands; In re Heff, 197 U. S. 499, 49 L. 853, 25 Sup. Ct. 506, arguendo.

Distinguished in Delaware Indians v. Cherokee Nation, 193 U. S. 140, 48 L. 653, 24 Sup. Ct. 342, parol evidence of understanding of parties is inadmissible to contradict terms of agreement of 1867 between Delaware and Cherokee nations.

(III, 292.) Miscellaneous. Cited in Blevins v. Morledge, 5 Okl. 145, 47 Pac. 1069, words giving joint authority to three or more public officers give authority to majority of them.

6 Pet. 598-621, 8 L. 514, CRANE v. MORRIS.

Syl. 1 (III, 298). Nonsuit against plaintiff's consent.

Approved in Parks v. Southern Ry. Co., 143 Fed. 278, on making motion by defendant for direction of verdict it is discretionary with court

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to grant motion and to refuse plaintiff nonsuit; Huntt v. McNamee, 141 Fed. 294, after plaintiff submits evidence and motion for direction of verdict by defendant has been submitted and sustained, it is discretionary to allow nonsuit.

Syl. 7 (III, 300). Prima facie evidence not disregarded.

Approved in State v. Martin, 47 Or. 290, 83 Pac. 852, witness in homicide case cannot be impeached by production of his testimony at inquest where stenographer could not say notes contained all of witness' testimony.

6 Pet. 622-633, 8 L. 523, KELLY v. JACKSON.

Syl. 3 (III, 301). Prima facie evidence defined.

Approved in State v. Dodds, 54 W. Va. 300, 46 S. E. 232, following rule; Tift v. Southern Ry. Co., 138 Fed. 759, act to regulate commerce creates presumption in favor of commissioner's report; Gilpin v. Missouri etc. Ry. Co., 197 Mo. 325, 94 S. W. 871, holding prima facie case not made out in action for killing of mare under statute making railroad liable where stock killed after going on track at place where no cattle-guards existed.

6 Pet. 648-660, BOYLE v. ZACHRIE.

Syl. 1 (III, 306). No error from refusal to quash execution.

Approved in King v. Davis, 137 Fed. 233, where ejectment was brought by third person against tenant, and landlord had no knowledge of action in time to have himself made party, he may have default judgment against tenant opened, and be allowed to defend.

Syl. 3 (III, 307). Federal equity practice not governed by states.

Approved in Brown v. Lanyon, 148 Fed. 842, action at law not maintainable for recovery of profits from infringement of patent.

Syl. 5 (III, 308). Federal execution—Effect of state law.

Approved in King v. Davis, 137 Fed. 241, Va. Code, 1887, § 3566, requiring filing of lis pendens in office of clerk of court in county where land lies does not apply to federal courts.

Syl. 6 (III, 309). Stay of execution—Supersedeas prior to levy.

Approved in Thalheim v. Camp Phosphate Co., 48 Fla. 195, 37 So. 525, Rev. St. 1892, § 1272, does not have effect of restoring property levied on to defendant in execution.

6 Pet. 661-665, 8 L. 537, EX PARTE DAVENPORT.

Syl. 1 (III, 309). Mandamus to allow double plea.

See 98 Am. St. Rep. 903, note.

6 Pet. 666-679, 8 L. 538, LINDSEY v. MILLER.

Syl. 1 (III, 310). No limitations against state.

See 101 Am. St. Rep. 151, 165, 182, note.

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6 Pet 691-760, 8 L. 547, UNITED STATES v. ARREDONDO.

Syl. 1 (III, 312). Jurisdiction defined.

Approved in Franklin Union v. People, 220 Ill. 366, 110 Am. St. Rep. 248, 77 N. E. 180, fact of defect of parties does not deprive court of jurisdiction over suit for injunction; O'Brien v. People, 216 Ill. 363, 108 Am. St. Rep. 219, 75 N. E. 112, where in suit to obtain injunction against strikers, defendants were served with process; but failed to file answers or demurrers, court acquired jurisdiction irrespective of defects in bill.

Syl. 4 (III, 316). Effect of government's consent to suit.

Affirmed in Walker v. United States, 139 Fed. 412, where marshal has in good faith rendered accounts against government, covering services of deputies, which have been allowed and paid, government cannot recover such sums after lapse of years.

Syl. 9 (III, 318). Actual fraud not presumed.

Approved in Kessler v. Ensley, 141 Fed. 137, applying rule to purchase of property of corporation by director.

Syl. 13 (III, 319). Acts of officers not presumed usurped.

Approved in McGuire v. Blount, 199 U. S. 146, 50 L. 129, 26 Sup. Ct. 1, documents which show probate of will in proceedings had during Spanish control of Florida, and judicial sale of testator's lands, and bear evidence of age and authenticity, and come from custody of United States surveyor general, are admissible as ancient documents.

Syl. 16 (III, 321). Conclusiveness of finding of public officers.

Approved in Eddy v. People, 218 Ill. 616, 75 N. E. 1072, under laws 1877, board of trustees in passing upon application for pension acts in quasi judicial capacity, and its finding is conclusive.

Syl. 17 (III, 323). Judicial questions—Acts of public officers.

Approved in Ward v. Board of Regents, 138 Fed. 378, where board of regents of college were authorized by statute to remove professors whenever best interests of college should require, ground on which professor was removed prior to expiration of contract is not subject for judicial investigation; Threadgill v. Colcord, 16 Okl. 469, 85 Pac. 710, purchaser at master's sale who is himself party cannot collaterally attack decree for irregularity.

Syl. 22 (III, 325). Nothing implied in public grant.

Approved in Knoxville Water Co. v. Knoxville, 200 U. S. 35, 50 L. 359, 26 Sup. Ct. 224, municipal grant of waterworks franchise does not impliedly devest municipality of power to construct its own waterworks.

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Syl. 26 (III, 328). Seisin presumed from title.

Approved in Tyee Consol. Min. Co. v. Langstedt, 136 Fed. 128, 69 C. C. A. 548, no disseisin sufficient to start statute of limitations as against locator of mining claim can exist prior to issuance of patent.

Syl. 29 (III, 329). Ratification of treaty relates to date.

Approved in In re Minook, 2 Alaska, 208, construing Russian treaty with reference to citizenship of half-breeds.

VII PETERS.

7 Pet. 1-17, 8 L. 587, UNITED STATES v. McDANIEL.

Syl. 3 (III, 334). Authority of departmental heads presumed.

Approved in Benson v. Henkel, 198 U. S. 12, 49 L. 923, 25 Sup. Ct. 569, objections to indictment charging violation of Rev. St., § 5451, in bribing federal officer to reveal contents of reports of pending land department investigation, are not available in proceedings before commissioner for removal of accused to another federal district..

Syl. 4 (III, 334). Usage as evidence of construction of law.

Approved in Walker v. United States, 139 Fed. 416, applying rule in estopping government from claiming setoff in suit by marshal, where items of setoff allowed and audited and paid to deputies for services.

Syl. 5 (III, 335). Setoff by departmental clerk.

Approved in United States v. Warren, 12 Okl. 365, 71 Pac. 690, in action by United States defendant may plead setoff to extent of demand made, but no judgment for balance in his favor can be rendered.

(III, 334.) Miscellaneous. Cited in McDaid v. Territory 1 Okl. 112, 30 Pac. 444, as to right to appeal to courts from decision of local land office.

7 Pet. 28-50, 8 L. 596, UNITED STATES v. FILLEBROWN.

Syl. 1 (III, 338). Parol proof of proceedings of boards.

Approved in City of Denver v. Spencer, 34 Colo. 274, 2 L. R. A. (N. S.) 47, 82 Pac. 591, where city charter did not specify how park board should act or that record of its acts should be exclusive evidence thereof, parol evidence admissible to show board had ordered erection of stand.

Syl. 2 (III, 339). Services according to departmental usage.

Approved in United States v. Schlierholz, 133 Fed. 335, special agent of general land office is not officer of United States within extortion act.

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7 Pet. 51-98, 8 L. 604, UNITED STATES v. PERCHEMAN.

Syl. 2 (III, 341). Cession of territory preserves property rights.

Approved in In re Chavez, 149 Fed. 75, on bankruptcy of husband having only community estate, claims of antenuptial creditor postponed till satisfaction of community creditors; Catron v. Laughlin, 11 N. M. 630, 72 Pac. 31, where New Mexico surveyor general declared Mexican land grant valid and recommended its confirmation without limitation as to quantity, and Congress confirmed grant as recommended confirmation is declaration that title to all land claimed is valid.

7 Pet. 99-102, 8 L. 621, MINOR v. TILLOTSON.

Syl. 1 (III, 347). Secondary evidence—Diligence to obtain original.

Distinguished in Brown v. Harkins, 131 Fed. 66, 65 C. C. A. 301, refusing evidence of contents of plaintiff's record-book in action by distiller to recover revenue taxes illegally collected, where collector took books.

7 Pet. 113-129, 8 L. 626, DOUGLASS v. REYNOLDS.

Syl. 4 (III, 350). Construction of guaranties.

Approved in First Nat. Bank v. Waddell, 74 Ark. 248, 85 S. W. 419, where mortgage issued by father to bank to cover advances to son to certain sum, payments made by son within amount did not discharge mortgage.

Syl. 5 (III, 351). Letter of credit as continuing guaranty.

Approved in Rouss v. King, 69 S. C. 174, 48 S. E. 222, surety not released by extension of credit beyond amount stipulated in contract.

7 Pet. 138-143, 8 L. 636, UNITED STATES v. MILLS.

Syl. 2 (III, 356). Indictment in language of statute.

Approved in United States v. Allen, 150 Fed. 154, holding indictment under Rev. St., § 4046, for embezzlement of money order funds, insufficient where it does not allege funds came into defendant's possession by virtue of employment; United States v. Green, 136 Fed. 641, 643, holding insufficient indictment under Rev. St., § 5451, for bribing officer with check.

7 Pet. 144-149, 8 L. 638, PICKETT'S HEIRS v. LEGERWOOD.

Syl. 1 (III, 359). Failure to file return of error during term.

Approved in Equitable etc. Soc. v. Tolbert, 145 Fed. 339, where, owing to delay in payment of docket fee, record, though lodged with clerk in time, was not filed until five days after return day, motion to dismiss writ of error four months afterward denied.

Syl. 2 (III, 359). Error prior to judgment corrected on motion.

Approved in Billups v. Freeman, 5 Ariz. 272, 52 Pac. 368, arguendo. See 97 Am. St. Rep. 372, note.

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Syl. 4 (III, 360). When coram nobis lies.

Approved in King v. Davis, 137 Fed. 227, 233, vacating judgment in ejectment suit brought against tenant where landlord not made party to suit; Fugate v. State, 85 Miss. 94, 107 Am. St. Rep. 272, 37 So. 556, writ of error coram nobis cannot be invoked in criminal proceeding to revoke judgment by showing jurors had formed opinion unfavorable to accused; Hadley v. Bernero, 103 Mo. App. 562, 78 S. W. 68, where, on appeal from justice judgment, question of jurisdiction for failure to appeal in time is not raised, motion in nature of writ of error coram nobis will not lie.

7 Pet. 150-163, UNITED STATES v. WILSON.

Syl. 2 (III, 361). Pardon defined.

Approved in Territory v. Richardson, 9 Okl. 584, 60 Pac. 245, 49 L. R. A. 440, reaffirming rule; Fite v. State, 114 Tenn. 656, 88 S. W. 943, holding void statutory provision authorizing deduction of time for good conduct.

Syl. 7 (III, 363). Pardon, how brought before court.

Approved in Territory v. Richardson, 9 Okl. 588, 60 Pac. 247, 49 L. R. A. 440, pardon may be available at any time before execution of sentence.

Syl. 8 (III, 363). Pardon annuls offense.

Approved in In re Briggs, 135 N. C. 123, 47 S. E. 405, upholding Code, § 1215, providing no witness can refuse to testify on prosecution relative to gambling, but providing that disclosures made by him cannot be used against him.

7 Pet. 171-219, 8 L. 647, HOLMES v. TROUT.

Syl. 3 (III, 365). Cancellation of deed—Grantor's title not reinstated.

Approved in Clark v. Harper, 215 Ill. 39, 74 N. E. 67, applying rule where deed made in violation of injunction was destroyed before record.

7 Pet. 222-242, 8 L. 665, SAMPEYREAC v. UNITED STATES.

Syl. 1 (III, 366). Retrospective statutes valid.

Approved in Wallace v. Adams, 143 Fed. 726, power conferred on Dawes Commission and federal courts in Indian Territory by act of 1896, and on supreme court by act of 1898, to determine who were citizens of Choctaw nation, was legislative, and judgments thereunder were subject to subsequent legislation respecting citizenship; Boggs v. Ganeard, 148 Cal. 721, 84 Pac. 199, upholding amendment of 1903,

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to Pol. Code, § 3443, relating to contests by previous settlers as against purchasers who made application for purchase prior to its passage.

Syl. 3 (III, 367). Grantee conveys only his title.

Approved in Lindblom v. Rocks, 146 Fed. 663, where defendant's grantor had no title nor right of possession to land in controversy at time he attempted to sell such right of possession to defendant, defendant acquired no title to subject matter of purchase and could not avail himself of defense of bona fide purchaser; Slaughter v. Mallet Land etc. Co., 141 Fed. 293, Texas county commissioner's courts may lease school lands and give preferential right of purchase to lessee.

7 Pet. 243-251, 8 L. 672, BARRON v. MAYOR AND CITY COUNCIL OF BALTIMORE.

Syl. 1 (III, 367). Fifth amendment not applicable to states.

Approved in Ex parte Munn, 140 Fed. 783, federal court has no power on habeas corpus to discharge prisoner for contempt of state court in refusing to answer questions as witness on ground that answers might incriminate him; Town of Nahant v. United States, 136 Fed. 281, 69 L. R. A. 723, 70 C. C. A. 641, determining right of municipality to compensation for structures and improvements on lands and streets taken by government by eminent domain; St. Louis etc. Ry. Co. v. Davis, 132 Fed. 632, federal court is not given jurisdiction of suit to enjoin officers of state from contemplated act by allegation that act will be in violation of fifth amendment; State v. Rudolph, 187 Mo. 82, 85 S. W. 587, upholding state prosecution for felony by information; State v. Miller, 71 N. J. L. 532, 60 Atl. 203, admitting evidence of jail physician that he compelled defendant to strip and found wounds on back of his hands; State v. MacQueen, 69 N. J. L. 527, 55 Atl. 1008, admitting newspaper articles found on defendant when arrested; In re Briggs, 135 N. C. 120, 47 S. E. 404, upholding Code, § 1215, denying right to refuse to testify touching gambling transactions, and providing discovery made by witness cannot be used against him; Territory v. Stroud, 6 Okl. 111, 50 Pac. 267, upholding prosecution of misdemeanors by information without preliminary examination; Riley v. Charleston Union Station Co., 71 S. C. 483, 110 Am. St. Rep. 581, 51 S. E. 495, upholding act of 1902, granting corporation right to condemn land for union depot; King v. Hatfield, 130 Fed. 578, arguendo.

7 Pet. 252-275, 8 L. 675, VATTIER v. HINDE.

Syl. 4 (III, 374). Rights of bona fide purchaser.

Approved in Lindblom v. Rocks, 146 Fed. 663, where defendant's grantor had no title nor right of possession to land in controversy at time he attempted to sell right of possession to defendant, defendant acquired no title and could not set up bona fide purchase; Johnson v. Georgia Loan etc. Co., 141 Fed. 597, 598, bona fide purchaser must

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allege want of actual notice and actual payment of purchase price independently of recitals in deed; Shook v. Southern B. & L. Assn., 140 Ala. 579, 37 So. 410, beneficiary in void trust deed executed by husband and wife conveying realty belonging in equity to wife, husband having legal title, to secure husband's debt, is not bona fide purchaser without notice of wife's equity; Slaughter v. Coke Co., 34 Tex. Civ. 602, 79 S. W. 865, under conveyance reciting grantor sold all right, title and interest in certain lands transferred to grantor by order of commissioner's court and contract for deed, grantee took only grantor's title.

7 Pet. 292-323, 8 L. 689, SHAW v. COOPER.

Syl. 6 (III, 380). Patents—Acquiescence in public use.

Approved in Victor Talking Mach. Co. v. American Graphaphone Co., 140 Fed. 864, mere exhibition of an experimentally constructed machine by inventor to audience, accompanied by explanation of invention, no charge being made, is not public use so as to defeat right to patent applied for two years afterward.

Distinguished in Eastman v. Mayor etc. of N. Y., 134 Fed. 853, 69 C. C. A. 628, where inventor of improved fire-engine pump placed device on engine of which he was engineer, where it was publicly tested and used for years, and shown to manufacturers of engine, there is no piracy in manufacturer placing device on another engine which they sold to another city.

7 Pet. 324-347, 8 L. 700, PEYROUX v. HOWARD (THE PLANTER).

Syl. 3 (III, 382). Admiralty—Enforcement of local law lien.

Approved in Fredericks v. Jas. Rees & Sons Co., 135 Fed. 731, 68 C. C. A. 368, Pa. Act 1858, giving lien for repairs on vessels navigating certain rivers in state, does not apply to dredger-boat used only for supporting and moving dredging apparatus; Commonwealth v. Ayer etc. Co., 117 Ky. 169, 77 S. W. 688, home port of vessel engaged in interstate commerce is its tax situs though owner resides in different state; The Sue, 137 Fed. 135, arguendo.

7 Pet. 348-398, 8 L. 709, MAGNIAC v. THOMPSON.

Syl. 2 (III, 387). Charge on matters of fact not reviewable.

Approved in Pittsburgh Ry. Co. v. Bloomer, 146 Fed. 721, applying rule in action for personal injuries against street railway.

7 Pet. 453-463, 8 L. 745, IN RE UNITED STATES v. EIGHTY-FOUR BOXES OF SUGAR.

Syl. 2 (III, 394). Revenue penal laws strictly construed.

Approved in United States v. Ninety-nine Diamonds, 139 Fed. 967, 968, 2 L. R. A. (N. S.) 185, where one who had right of possession of and lien on imports, together with option to purchase, declared

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in good faith in making entry that he was owner, he was not guilty of offense under 26 Stat. 135.

7 Pet. 469-553, 8 L. 751, LESSEE OF LIVINGSTON v. MOORE.

Syl. 4 (III, 397). Ninth amendment not limitation on states.

Approved in Territory v. Stroud, 6 Okl. 111, 50 Pac. 267, upholding prosecution of misdemeanor by information without preliminary examination.

Distinguished in Bradford v. Territory, 1 Okl. 371, 34 Pac. 67, holding void Okl. St., c. 70, art. 18, § 22, providing that nine jurors may return verdict.

7 Pet. 568-585, 8 L. 786, EX PARTE WATKINS.

Syl. 3 (III, 401). Commitment till fine paid.

Approved in State ex rel. Caillouet v. Mannought, 111 La. 236, 35 So. 533, commitment for vagrancy fixing period of detention for certain designated period not void, though contrary to ordinance.

7 Pet. 608-624, 8 L. 801, BRASHEAR v. WEST.

Syl. 9 (III, 407). Counterclaims acquired after assignment.

Distinguished in Williams v. Neely, 134 Fed. 5, 69 L. R. A. 232, 67 C. C. A. 171, a sound reason, inhering in same transaction from which note springs, why holder ought not recover face value, is good equitable defense, though it constitute no offset against holder of note.

Syl. 11 (III, 408). Service of garnishment.

Approved in Barton v. Spencer, 3 Okl. 274, 278, 41 Pac. 606, 608, where service of process in garnishment is had, subsequent attaching creditors obtain no rights as against creditor obtaining garnishment.,

7 Pet. 634-650, 8 L. 810, EX PARTE BRADSTREET.

Syl. 3 (III, 410). Mandamus to reinstate cause and enter decree.

Approved in Barber Asphalt Pav. Co. v. Morris, 132 Fed. 954, 956, 67 L. R. A. 761, 66 C. C. A. 55, granting mandamus to compel circuit judge to vacate order staying proceedings pending determination of appeals in state court; In re Dowd, 133 Fed. 751, arguendo. See 98 Am. St. Rep. 893, note.

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VIII PETERS.

8 Pet. 1-3, 8 L. 845, DUNN v. CLARKE.

Syl. 3 (III, 414). Citizenship—Injunction to stay execution.

Approved in O'Connor v. O'Connor, 146 Fed. 997, federal equity suit to set aside dismissal entered by same court in action at law is ancillary to such action and within jurisdiction of federal court, irrespective of citizenship; Campbell v. Golden Cycle Min. Co., 141 Fed. 613, 616, dependent suit cannot be sustained to adjudicate claims of those not parties to or in privity with original suit, except in case of those who claim interest in property in custody of court.

8 Pet. 4-11, 8 L. 846, STRATTON v. JARVIS.

Syl. 6 (III, 417). Admiralty—Amount in dispute—Joint claimants.

Approved in The Joseph B. Thomas, 148 Fed. 767, where number of libelants join in suit for wages, claims cannot be added together to give appellate jurisdiction.

8 Pet. 18-29, 8 L. 852, ERWIN v. BLAKE.

Syl. 4 (III, 420). Equitable relief on equitable terms.

Approved in dissenting opinion in Haydon v. St. Louis etc. R. R. Co., 117 Mo. App. 108, 93 S. W. 843, majority holding restoration of consideration received is not prerequisite to cancellation of agreement and damages, if petition ask that all sums paid out by defendant under contract be credited on judgment.

8 Pet. 44-51, 1 L. 861, LEE v. LEE.

Syl. 5 (III, 422). Acts in fraud of law violate it.

Approved in Curley v. United States, 130 Fed. 11, 64 C. C. A. 369, one who, by agreement with another who desires appointment as letter carrier, falsely impersonates other at civil service examination, is guilty of conspiracy to defraud within Rev. St., § 5440.

8 Pet. 52-74, 8 L. 863, ARMSTRONG v. LEAR.

Syl. 3 (III, 422). Foreign laws must be pleaded.

See 113 Am. St. Rep. 871, note.

8 Pet. 88-111, 8 L. 876, WATSON v. MERCER.

Syl. 4 (III, 427). Validating acts do not impair contracts.

Approved in Whitlock v. Hawkins, 105 Va. 251, 53 S. E. 404, upholding act of 1906, amending Code, c. 23, relating to assessments and validating assessments.

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8 Pet. 112-117, 8 L. 885, BROWN v. KEENE.

Syl. 2 (III, 430). Federal jurisdiction must affirmatively appear.

Approved in Thomas v. Board of Trustees, 195 U. S. 210, 218, 49 L. 164, 167, 25 Sup. Ct. 24, allegation that defendant, board of trustees of Ohio University, is citizen of that state, is insufficient averment that it is Ohio corporation, within federal jurisdictional rule, where statute creating board has been held not to confer corporate powers; Irving v. Smith, 132 Fed. 207, allegation in removal petition that defendant is citizen of another state is not equivalent to allegation of nonresidence; Myers v. Berry, 3 Okl. 618, 41 Pac. 582, denying equity jurisdiction of suit to annul action of townsite trustees in disposing of lot where petition insufficient.

8 Pet. 128-147, 8 L. 890, BANK OF UNITED STATES v. RITCHIE.

Syl. 5 (III, 434). No decree pro confesso against infant.

Approved in Rankin v. Schofield, 71 Ark. 173, 100 Am. St. Rep. 59, 66 S. W. 198, compromise judgment affecting interests of ward in estate, to which guardian assents, does not preclude appeal by ward after majority.

8 Pet. 148, 149, 8 L. 898, JACKSON v. ASHTON.

Syl. 4 (III, 437). Want of jurisdiction cannot be waived.

Approved in International etc. R. Co. v. Hoyle, 149 Fed. 182, want of jurisdiction of suit removed by one of two joint defendants raisable at any time by any party or by court sua sponte.

8 Pet. 150-164, 8 L. 899, UNITED STATES v. RINGGOLD.

Syl. 8 (III, 438). Setoff against United States.

Approved in United States v. Warren, 12 Okl. 365, 71 Pac. 690, allowing setoff in suit by United States to extent of demand made.

8 Pet. 262-270, 8 L. 938, BANK OF UNITED STATES v. WHITE.

Syl. 1 (III, 445). Necessary parties to bill of review.

Approved in State Fair Assn. v. Terry, 74 Ark. 157, 85 S. W. 89, where, pending appeal in suit to redeem from foreclosure, one defendant represented by guardian died, and appeal dismissed for failure to revive, notice of bill of review served on guardian and not on heirs is insufficient.

8 Pet. 281-287, 8 L. 945, MUMMA v. POTOMAC COMPANY.

Syl. 2 (III, 448). Scire facias—Dissolution of corporation.

Distinguished in Hudson v. Limestone Natural Gas Co., 132 Fed. 411, in absence of statutory authority therefor, stockholders of dissolved corporation cannot be held individually liable for damages caused by negligence of corporation committed in conduct of its business before dissolution.

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Syl. 3 (III, 449). Corporate contracts—Cancellation of charter.

Approved in Griffith v. Blackwater B. & L. Co., 55 W. Va. 609, 48 S. E. 443, 69 L. R. A. 124, where executory contract with corporation is terminated by dissolution of corporation, contractor is entitled to compensation for services till termination of contract and for reimbursement of necessary outlay. See 103 Am. St. Rep. 570, note.

8 Pet. 291-305, 8 L. 949, LIFE AND FIRE INS. CO. OF NEW YORK v. WILSON'S HEIRS.

Syl. 1 (III, 453). No mandamus in doubtful cases.

Approved in State v. United States Express Co., 95 Minn. 445, 104 N. W. 557, denying mandamus to compel carrier to accept packages from one engaged in lottery business.

Syl. 3 (III, 454). Mandamus to inferior tribunal.

Cited in In re Dowd, 133 Fed. 751, arguendo.

Syl. 4 (III, 454). New trial by successor of trial judge.

Approved in United States v. Meldrum, 146 Fed. 392, applying rule in criminal case.

Syl. 6 (III, 455). Mandamus to compel signing of judgment.

Approved in Barber Asphalt etc. Co. v. Morris, 132 Fed. 954, 956, 67 L. R. A. 761, 66 C. C. A. 55, mandamus lies to compel circuit judge to vacate order staying proceedings pending determination of appeals in state court. See 98 Am. St. Rep. 894, note.

8 Pet. 361-374, 8 L. 974, BANK OF UNITED STATES v. DONNALLY.

Syl. 7 (III, 460). Law governing remedy on contracts.

Approved in Anglo-American etc. Co. v. Wood, 143 Fed. 684, under Pennsylvania law permitting joinder of causes of action, judgment creditor of Kansas corporation suing stockholder in Pennsylvania federal court may join in the statement of claim counts based on Kansas statute giving him right of action because of insolvency of corporation and giving him right of action because of its dissolution; Murray v. Farrell, 2 Alaska, 363, applying rule in action on note made in Montana where defendant moved to Alaska before Montana limitations ran; Brand v. Brand, 116 Ky. 797, 798, 76 S. W. 872, 63 L. R. A. 206, where plaintiff holding note against defendant assigned it to A. for collection, and New York court decided for defendant on ground of limitations, such judgment not bar to action in Kentucky where different limitation existed; Clark v. Eltinge, 38 Wash. 383, 107 Am. St. Rep. 858, 80 Pac. 559, exemptions of married woman as debtor are governed by law of place of suit; Supreme Lodge, Knights of Pythias v. Meyer, 198 U. S. 517, 49 L. 1149, 25 Sup. Ct. 754, arguendo.

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8 Pet. 375-386, 8 L. 979, UNITED STATES v. JONES.

Syl. 3 (III, 462). Admissibility of item in treasury transcript.

Approved in United States v. Pierson, 145 Fed. 819, in action on bond of Indian agent, transcript of books and proceedings of treasury department is not evidence of receipt by such agent of moneys that did not come to his hands through ordinary channels of department.

Syl. 4 (III, 463). Treasury transcript as evidence.

Approved in United States v. Pierson, 145 Fed. 817, in absence of countervailing evidence in action on Indian agent's bond, duly certified transcript of books and proceedings of treasury department entitle government to judgment.

8 Pet. 399-419, 8 L. 988, UNITED STATES v. JONES.

Syl. 5 (III, 464). Burden to disprove receipts.

Approved in Devencenzi v. Cassinelli, 28 Nev. 232, 81 Pac. 42, applying rule in action for balance due on account stated.

8 Pet. 420-434, 8 L. 995, HOLT v. RODGERS.

Syl. 2 (III, 464). Laches defeats specific performance.

Approved in Marks v. Gates, 2 Alaska, 526, refusing specific performance of grubstake contract.

8 Pet. 538-556, 8 L. 1036, THE VIRGIN v. VYFHIUS.

Syl. 6 (III, 477). Libel on bottomry bond—Burden of proof.

Approved in The Wyandotte, 145 Fed. 326, following rule.

8 Pet. 588-590, 8 L. 1054, BRADSTREET v. HUNTINGTON.

Syl. 1 (III, 481). Mandamus does not control discretion.

Distinguished in Barber Asphalt etc. Co. v. Morris, 132 Fed. 956, 67 L. R. A. 761, 66 C. C. A. 55, granting mandamus to compel circuit judge to vacate order staying proceedings pending determination of appeals in state court.

8 Pet. 591-699, 8 L. 1055, WHEATON AND DONALDSON v. PETERS AND GRIGGS.

Syl. 3 (III, 482). Literary proprietorship in manuscript protected.

Approved in Walker v. Globe Newspaper Co., 140 Fed. 306, 307, upholding right to sue at law for damages for infringement of copyrighted map; Werckmeister v. American Lith. Co., 134 Fed. 325, 68 L. R. A. 591, exhibition of original copyrighted painting at academy, at which no person was entitled to copy same, and others than members only admitted on payment of fee, without notice of copyright thereon, is not publication avoiding copyright.

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Syl. 4 (III, 483). Common law of United States.

Approved in Walker v. Globe Newspaper Co., 130 Fed. 596 (reversed 140 Fed. 305), owner of copyrighted map cannot recover damages at law for infringement thereof; Valentine v. Roberts, 1 Alaska, 544, issuance and service of order of arrest in civil proceeding on Sunday is void; In re Burkell, 2 Alaska, 117, stealing of dog is larceny.

Syl. 7 (III, 484). Copyright is purely statutory.

Approved in Bobbs-Merrill Co. v. Straus, 147 Fed. 19, 21, 23, where complainant sold copies of copyrighted book in which was published notice that retail price was $1, and that sales at less price would be treated as copyright, he was not entitled to injunction restraining sale at less than $1; Hartman v. Park & Sons Co., 145 Fed. 360, upholding contracts between maker of proprietary medicine between himself and wholesalers, to whom alone he sold medicine by which they sold only at certain price and to certain retailers, and between him and retailers whereby they agreed to sell only at certain price.

Syl. 9 (III, 485). Copyright vests on recordation.

Approved in G. & C. Merriam Co. v. United Dict. Co., 140 Fed. 769, where plates for copyrighted books are, after publication here, taken to England and edition printed there without notice of American copyright, reproduction here from copy of English edition is not infringement.

IX PETERS.

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9 Pet. 8-32, 9 L. 31, UNITED STATES v. NOURSE.

Syl. 2 (III, 489). Execution is end of law.

Approved in Ingraham v. National Salt Co., 139 Fed. 690, where, pending federal suit by attachment, state insolvency proceedings against defendant instituted under which receiver took possession of attached property and sold same, and subsequently plaintiff secured judgment in federal court and got execution, and state court enjoined federal sale, federal court refused to enjoin receiver; McKinster v. Sager, 163 Ind. 686, 106 Am. St. Rep. 268, 72 N. E. 860, 68 L. R. A. 273, holding void Acts 1903, p. 276, c. 153, making sales by merchant, save in usual course of trade, void as to creditors, excepting under certain conditions.

9 Pet. 86-106, 9 L. 660, CALDWELL v. CARRINGTON.

Syl. 3 (III, 493). Jurisdiction necessary to lis pendens.

Approved in Hunter v. Coe, 12 N. D. 512, 97 N. W. 871, one purchasing realty with notice of outstanding option compelled to convey

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on purchaser paying him from unpaid purchase price amount paid to vendor.

9 Pet. 117-136, 9 L. 71, DELASSUS v. UNITED STATES.

Syl. 2 (III, 494). Inchoate title to land is property.

Approved in Crochet v. McCamant, 116 La. 12, 40 So. 477, homestead entry becomes community property though certificate and patent issued after death of wife.

Syl. 3 (III, 494). Cession treaty protects private property rights.

Approved in Corkran Oil etc. Co. v. Arnaudet, 111 La. 577, 35 So. 753, reaffirming rule.

9 Pet. 174-181, 9 L. 91, TARVER v. TARVER.

Syl. 4 (III, 496). Federal courts—Correction of erroneous probate.

Approved in Medill v. Snyder, 71 Kan. 598, 81 Pac. 219, time limited by statute of wills for bringing action in district court to contest will is not extended by Code Civ. Proc., § 23, relating to revival of actions by representatives. See 106 Am. St. Rep. 643, note.

9 Pet. 182-203, 9 L. 94, FIELD v. UNITED STATES.

Syl. 1 (III, 499). Priority of United States—Local law.

See 101 Am. St. Rep. 165, note.

Syl. 4 (III, 499). Exceptions to evidence—Trial to court.

Approved in Streeter v. Sanitary Dist. of Chicago, 133 Fed. 131, 66 C. C. A. 190, applying rule in action to recover amount due on contract for excavation of canal.

9 Pet. 238-266, 9 L. 113, UNITED STATES v. BAILEY.

Syl. 2 (III, 503). Perjury before state official.

Approved in United States v. Union Bridge Co., 143 Fed. 387, upholding 30 Stat. 1153, requiring alteration of bridges over navigable waters on determination by Secretary of War that they obstruct navigation; United States v. Hardison, 135 Fed. 422, where defendant swore falsely as to qualifications as surety on distiller's bond, before deputy internal revenue collector, he was guilty of perjury under Rev. St., § 5392, though under state law he was guilty of false swearing; Finch v. United States, 1 Okl. 401, 403, 33 Pac. 640, 641, giving false testimony by juror on voir dire before United States district court is perjury.

Distinguished in United States v. Sandefuhr, 115 Fed. 51, Rev. St., § 3449, does not apply to shipment, concealing name or brands required by regulations of internal department to be put on all vessels containing liquors.

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9 Pet. 275-291, 9 L. 127, BOYCE'S EXECUTORS v. GRUNDY.

Syl. 2 (III, 505). Decreeing sale of land in another state.

Approved in Jones v. Byrne, 149 Fed. 470, following rule.

9 Pet. 319-328, 9 L. 142, UNITED STATES v. ROBESON.

Syl. 1 (III, 507). Setoff against United States.

Approved in United States v. Warren, 12 Okl. 365, 71 Pac. 690, allowing setoff in action by United States to extent of demand made.

Syl. 5 (III, 508). Contract fixing mode of compensation.

Approved in Continental Ins. Co. v. Vallandingham, 116 Ky. 300, 105 Am. St. Rep. 218, 76 S. W. 24, failure of insured to submit adjustment of loss to appraisers as provided in policy is good defense to suit thereon; Hebert v. Dewey, 191 Mass. 410, 413, 77 N. E. 825, where under building contract providing for final payment only on certificate of architect, recovery may be had without certificate where architect without excuse refuses to act; McNichols v. Prudential Ins. Co., 191 Mass. 308, 77 N. E. 757, where life policy provided that premiums to be recognized must be entered on premium receipt-book, it is error to admit evidence of payment not entered on book; E. E. Souther Iron Co. v. Laclede Power Co., 109 Mo. App. 364, 84 S. W. 453, where meter designated in contract for measuring electric power furnished under contract is inadaquate for that purpose, evidence is admissible as to operation of another meter and of results obtained; Grady v. Home etc. Ins. Co., 27 R. I. 441, 63 Atl. 175, where policy provided for arbitration of loss as condition precedent to right of action, where arbitration fails without fault of either party, insured must demand new arbitration before suing; Plumbing Co. v. Carr, 54 W. Va. 278, 282, 46 S. E. 461, 463, where plumbing and heating contract provided work to be done to satisfaction of owner, reasons for rejection cannot be ignored where not fraudulent.

Syl. 8 (III, 513). Adopting state practice.

Approved in Jones v. Rogers, 85 Miss. 830, 38 So. 745, execution sale by marshal on federal judgment, outside of county in which land situated, is void, unless return shows it was held at place of holding federal court at written request of defendant.

9 Pet. 378-404, 9 L. 163, BANK OF UNITED STATES v. WAGGENER.

Syl. 1 (III, 515). Usury—Necessity for intent.

Approved in Gunby v. Armstrong, 133 Fed. 432, 66 C. C. A. 627, applying rule to note given by borrowing stockholder of loan association where borrower subscribed for stock; Anderson v. Creamery etc. Mfg. Co., 8 Idaho, 208, 101 Am. St. Rep. 188, 67 Pac. 495, 56 L. R. A. 554, where note provides for interest at ten cent per annum both before and after judgment, and no corrupt intent on part of lender to receive unlawful rate of interest appears, it is not usurious.

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9 Pet. 405-417, 9 L. 173, PIATT v. VATTIER.

Syl. 1 (III, 517). Pleading exception in limitation statute.

Approved in Pierce v. Perry, 189 Mass. 335, 109 Am. St. Rep. 637, 75 N. E. 736, where bill alleged that defendant acted as financial agent and trusted adviser of plaintiff's intestate, and as such did various acts described in bill, allegations were sufficient to show limitations pleaded in bar inapplicable, without special replication.

9 Pet. 483-540, 9 L. 201, HARRISON v. NIXON.

Syl. 4 (III, 524). Law governing construction of wills.

Approved in In re Estate of Riesenberg, 116 Mo. App. 314, 90 S. W. 1172, where testator domiciled in Missouri makes bequest to sister resident in Germany, or in case of her death before him to her heirs, question of who are her heirs is governed by laws of Missouri.

9 Pet. 607-631, 9 L. 246, OWINGS v. HULL.

Syl. 3 (III, 529). Judicial notice of state laws.

See 113 Am. St. Rep. 873, note.

Syl. 6 (III, 530). Ratification of agent's acts—Knowledge.

Approved in McGlassen v. Tyrrell, 5 Ariz. 54, 44 Pac. 1088, payee of note does not, by accepting interest paid in advance to agent, without knowledge that it was advance interest, ratify act of such agent, so as to discharge surety on note; Fosha v. O'Donnell, 120 Wis. 336, 97 N. W. 927, applying principle to ratification of stipulations of attorney.

9 Pet. 632-662, 9 L. 255, LIVINGSTON v. STORY.

Syl. 2 (III, 532). Equitable remedies in federal courts.

Approved in Bowdish v. Metzger, 71 Kan. 754, 81 Pac. 484, where petition in suit to quiet title is sufficient except that it does not plead title under which defendants claim, but states that its nature and extent is unknown, and prays its disclosure, it states good cause of action for discovery and relief.

Syl. 5 (III, 532). Demurrer to bill good in part.

Approved in Maeder v. Buffalo Bill's W. W. Co., 132 Fed. 282, applying rule where necessary party not made defendant in suit to set aside conveyance.

9 Pet. 682-691, 9 L. 273, UNITED STATES v. BRIG BURDETT.

Syl. 3 (III, 535). Reasonable doubt bars forfeiture.

Approved in dissenting opinion in Paine v. Foster, 9 Okl. 283, 60 Pac. 31, majority determining rights arising over contest between homesteader and townsite settler.

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9 Pet. 704-710, 9 L. 280. EX PARTE MILBURN.

Syl. 3 (III, 537). Arrest not barred by forfeiture of bail.

Approved in State v. Schenck, 138 N. C. 564, 49 S. E. 918, holding bail bond liable for fine where accused did not pay it.

9 Pet. 711-763, 9 L. 283, MITCHELL v. UNITED STATES.

Syl. 5 (III, 537). Property rights in ceded territory.

Approved in In re Chavez, 149 Fed. 75, on bankruptcy of husband having only community estate, claims of antenuptial creditor postponed to those of community creditors.

Syl. 8 (III, 538). King sues as subject.

Approved in Mountain Copper Co. v. United States, 142 Fed. 629, government suing as land owner to enjoin lawful business as nuisance has only rights of individual suitor.

Syl. 9 (III, 538). Fee in crown subject to Indian's possession.

Distinguished in Labadie v. United States, 6 Okl. 416, 51 Pac. 671, Indian sustaining tribal relations is subject to penalty under Act Cong. June 4, 1888, for cutting timber on reservation for speculative purposes.

X PETERS.

10 Pet. 1-23, 9 L. 325, DUBOIS v. HEPBURN.

Syl. 1 (III, 541). Construction of tax redemption acts.

Approved in Hillis v. O'Keefe, 189 Mass. 140, 75 N. E. 148, where complainant claimed land under deed from one of heirs of R., and testified he had been on land and paid taxes assessed in name of heirs of R., evidence is prima facie to show ownership under statute authorizing owner to redeem from tax sale; Rogers v. Nichols, 186 Mass. 443, 71 N. E. 951, upholding statute of 1902 providing for redemption from tax sale by tender to collector instead of purchaser at sale, as against purchaser after passage of act for taxes assessed prior to its passage.

Syl. 2 (III, 542). Suit to redeem from tax sale—Tender.

Approved in Hillis v. O'Keefe, 189 Mass. 141, 75 N. E. 149, where, in suit to redeem from tax sale, court found that plaintiff's agent offered to pay defendant what was due him on last day allowed for redemption and that defendant refused, tender waived.

10 Pet. 24, 9 L. 333, OWINGS v. TIERMAN.

Syl. 1 (III, 542). Contemporaneous motions to docket and dismiss.

Approved in Equitable Life Assur. Soc. v. Tolbert, 145 Fed. 339, where, owing to delay in payment of docket fee, writ of error,

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though lodged with clerk in due time, was not filed until five days after return day, motion to dismiss made four months after record filed denied.

10 Pet. 25-57, 9 L. 333, HARRIS v. ELLIOTT.

Syl. 2 (III, 543). Land not appurtenant to land.

Approved in Moss v. Chappell, 126 Ga. 202, 54 S. E. 971, construing deed to railroad for railroad purposes.

Syl. 3 (III, 543). Highways—Fee remains in land owner.

See 101 Am. St. Rep. 117, note.

10 Pet. 58-79, 9 L. 345, TUCKER v. MORELAND.

Syl. 4 (III, 545). How infant avoids acts.

Approved in Seed v. Jennings, 47 Or. 467, 83 Pac. 873, where father conveyed property to minor son and son reconveyed same during minority but promptly disaffirmed reconveyance on majority, title after disaffirmance was in son.

10 Pet. 107, 9 L. 363, HOOK v. LINTON.

(III, 550.) Dismissal where appellant dies.

Approved in Brown v. Fletcher, 140 Fed. 645, where after death of complainant in federal equity court representatives do not, within reasonable time, revive suit, defendant may move to dismiss.

10 Pet. 137-159, 9 L. 373, ELLIOTT v. SWARTWOUT.

Syl. 3 (III, 553). Recovery of payments—Mistake of law.

Approved in Scott v. Ford, 45 Or. 544, 78 Pac. 746, 68 L. R. A. 469, where testator left property to daughter's five children and executor paid sixth to child of deceased child, he cannot recover sum so paid.

10 Pet. 161-176, 9 L. 382, VENTRESS v. SMITH.

Syl. 7 (III, 558). Administrator's authority to sell.

Approved in dissenting opinion in Thomas v. Provident Life etc. Co., 138 Fed. 369, majority holding where executor applied proceeds of loan raised by mortgage of testator's realty to pay debts of estate, estate bound to repay, though under will executor not authorized to execute mortgage.

10 Pet. 177-256, 9 L. 388, BOONE v. CHILES.

Syl. 1 (III, 559). Equity—Presence of necessary parties.

Approved in Lynch v. United States, 13 Okl. 156, 73 Pac. 1100, applying rule in suit to annul townsite patent where lots sold to numerous purchasers.

Syl. 4 (III, 560). Bona fide purchaser—Grantor's notice.

Approved in United States v. Clark, 138 Fed. 299, after entry is confirmed and patent issued, government cannot recover land for

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fraudulent entry, as against bona fide purchaser; United States v. Detroit etc. Co., 131 Fed. 678, purchasers in good faith, without notice, for value, of title evidenced by receiver's final receipts upon which patents subsequently issue, may defend as bona fide purchasers against suit by government to avoid patents for fraud in procurement of patent.

Syl. 6 (III, 561). Title of bona fide purchaser.

Approved in Lynch v. United States, 13 Okl. 145, 73 Pac. 1096, applying rule in suit to annul townsite patent where lots sold to innocent purchasers.

Syl. 7 (III, 561). Pleading defense of bona fide purchaser.

Approved in Johnson v. Georgia Loan etc. Co., 141 Fed. 597, 598, one claiming as bona fide puchaser must allege and prove want of notice and actual payment of purchaser of money independently of recitals in deed; Bell v. Pleasant, 145 Cal. 414, 104 Am. St. Rep. 61, 78 Pac. 958, in action to cancel deeds, where plaintiff claims under prior unrecorded deed and defendant claims under recorded deed resting upon subsequent recorded deed from plaintiff's granter, under which grantee took no title as such, defendant has burden of proving he is bona fide purchaser; Slaughter v. Coke Co., 34 Tex. Civ. 602, 79 S. W. 865, conveyance reciting that grantor sold all right, title and interest in lands transferred to grantor by order of court and contract for deed shows grantee took only title grantor had.

Syl. 8 (III, 564). Champerty does not bar action.

Approved in Elser v. Village of Gross Point, 223 Ill. 240, 79 N. E. 30, fact that litigation grows out of champertous contract is no defense in collateral proceeding; Robertson v. Cayard, 111 Tenn. 366, 77 S. W. 1059, repeal of champerty act of 1821, by act of 1899, did not bar suit relating to champertous agreement.

Syl. 10 (III, 565). Limitations against express trust.

Approved in Patterson v. Hewitt, 11 N. M. 42, 66 Pac. 565, 55 L. R. A. 658, applying rule in enforcement of oral trust relating to mining locations.

Syl. 14 (III, 567). Equity—Relief under general prayer.

Approved in Lockhart v. Leeds, 195 U. S. 437, 49 L. 269, 25 Sup. Ct. 76, in suit to declare mining location by defendant void, and that plaintiff have possession, defendant may be treated as trustee ex maleficio under prayer for general relief.

10 Pet. 257-268, 9 L. 416, SPRIGG v. BANK OF MOUNT PLEASANT.

Syl. 3 (III, 568). Estoppel of principal to show he is surety.

Approved in Merchants' Nat. Bank v. Murphy, 125 Iowa, 609, 101 N. W. 442, applying rule where surety agreed that whatever his relation was in fact, he should, as between himself and the creditor, be regarded as principal.

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10 Pet. 298-302, 9 L. 432, GILMAN v. RIVES.

Syl. 2 (III, 572). Judgment on demurrer as res adjudicata.

Approved in Board of County Commrs. v. Cross, 12 N. M. 77, 73 Pac. 616, judgment of dismissal on sustaining demurrer passing on material issues involved is bar to second suit; Frye v. Miley, 54 W. Va. 333, 46 S. E. 139, decree dismissing bill on demurrer must show it is not on merits or that it is without prejudice; State v. McEldowney, 54 W. Va. 701, 47 S. E. 652, applying rule in suit attacking tax sale.

10 Pet. 303-305, 9 L. 434, UNITED STATES v. FERNANDEZ.

Syl. 1 (III, 573). Grant of lands in possession of Indians—Cession.

Distinguished in Labadie v. United States, 6 Okl. 416, 51 Pac. 671, Indian sustaining tribal relations who cuts timber on reservation for speculative purposes is liable under Act Cong. June 4, 1888.

10 Pet. 308, 9 L. 435, UNITED STATES v. CHAIRES.

Syl. 1 (III, 574). Confirmation of Spanish governor's grant.

Cited in Wilson v. Knight, 48 Fla. 200, 37 So. 187, arguendo.

10 Pet. 326-337, 9 L. 442, SMITH v. UNITED STATES.

Syl. 2 (III, 575). French treaty protected inchoate titles.

Approved in Corkran Oil etc. Co. v. Arnaudet, 111 La. 577, 35 So. 753, following rule.

Syl. 5 (III, 576). Private surveys not binding.

Approved in United States v. Montana Lumber etc. Co., 196 U. S. 578, 49 L. 605, 25 Sup. Ct. 367, until identification by government survey of odd-numbered sections of railroad grant, United States may recover value of timber cut and removed by railroad or its grantees.

10 Pet. 343-365, 9 L. 448, UNITED STATES v. BRADLEY.

Syl. 2 (III, 578). Voluntary bond to United States.

Approved in Smith v. United States, 5 Ariz. 64, 45 Pac. 344, where bond of receiver of public moneys was, by direction of President, increased above statutory amount, bond not void on ground of duress; Dudley v. Rice, 119 Wis. 100, 95 N. W. 937, where guardian's bond was conditioned to pay over amount found due on settlement with court or ward, it was enforceable as voluntary bond, though court had no jurisdiction of guardianship proceedings.

Syl. 3 (III, 579). Bond good in part.

Approved in Potter v. Potter, 43 Or. 153, 72 Pac. 703, contract whereby husband, on payment of sum, agrees to convey to wife conditioned that paper is drawn that she release her dower in certain land and he release curtesy in her land, is entire; Probate Court of Central Falls v. Adams, 27 R. I. 99, 60 Atl. 770, bond given by executor

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who is also residuary legatee, when property conditioned to pay debts and legacies, is not invalidated because it also contains clause requiring executor to account; Yost v. Ramey, 103 Va. 120, 48 S. E. 864, where executor's bond contained provision waiving right to discharge any liability except in legal tender as provided by repealed statute, bond not void; Osgood v. Central Vermont Ry. Co., 77 Vt. 342, 60 Atl. 139, 70 L. R. A. 930, where lessee of railroad right of way for coalsheds agreed to indemnify defendant for injuries to his property or servants by negligence of defendant, contract was enforceable as to indemnity, though statute punishing railroad agent's negligence provided it did not exempt liability for damages; dissenting opinion in McBride v. Farrington, 149 Fed. 115, majority holding valid leases by secretary of Chickasaw nation of mining lands, so far as they authorized coal mining for period not exceeding ten years.

Syl. 4 (III, 581). Paymaster may act without bond.

Approved in Houston v. Estes, 35 Tex. Civ. 104, 79 S. W. 851, though manner of qualification of policeman is not in strict conformity with law, he is an officer de jure where he has taken oath and given bond which has been accepted.

10 Pet. 400-406, 9 L. 470, HAGAN v. LUCAS.

Syl. 1 (III, 584). First levy gives jurisdiction.

Approved in In re Porterfield, 138 Fed. 197, where trust deed from bankrupt to wife was recorded less than four months prior to state court suit, but more than four months prior to bankruptcy proceedings, which were brought within four months of state suit, and all parties to bankruptcy proceedings, state law relating to preferences not available to creditors; Burnham etc. Co. v. Dickson, 5 Okl. 117, 47 Pac. 1061, where execution issued out of probate court and later, on same day, attachment issued out of district court of same county, latter, having been first served, has priority.

Syl. 2 (III, 589). Federal levy after state execution.

Approved in Hearn v. Ayers, 77 Ark. 504, 92 S. W. 770, where property seized by sheriff on replevin was adjudged to belong to plaintiff, sheriff could not thereafter question plaintiff's title.

10 Pet. 412-446, 9 L. 475, ELLICOTT v. PEARL.

Syl. 2 (III, 591). Witnesses—Impeachment and corroboration by declarations.

Approved in Burks v. State, 78 Ark. 274, 93 S. W. 984, where witness denied making statements contradicting testimony and evidence of contradictory statements admitted, former statements supporting testimony inadmissible in absence of proof of change of circumstances; Legere v. State, 111 Tenn. 375, 77 S. W. 1061, where witness in murder prosecution had made prior statements contradicting those made at trial, evidence that subsequent to those statements and

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while negotiating for turning state's evidence for same murder he had made statements corroborative of those made at trial is inadmissible.

Syl. 3 (III, 591). Discrediting own witness.

Approved in dissenting opinion in People v. Elco, 131 Mich. 531, 94 N. W. 1070, majority holding prosecution in criminal case may show contradictory statements of hostile witness, whom law compels it to call, for purpose of affecting his credibility.

Syl. 6 (III, 593). Entrance under color of title—Boundaries.

Approved in Scott v. Mineral Development Co., 130 Fed. 501, 503, 506, 64 C. C. A. 659, continuation of possession of part of tract under deed of whole tract, for statutory period gives title to whole, though title obtained through separate conveyances of different parts of tract; United States v. Roth, 2 Alaska, 264, holding possession of homestead entryman under public land laws coextensive with his boundaries and to extend over shore lands of navigable stream abutting thereon; Haggart v. Ranney, 73 Ark. 353, 84 S. W. 706, actual possession of tract under instrument giving color of title to it and to adjacent tract does not draw to it constructive possession of adjacent tract as against true owner.

10 Pet. 449-479, 9 L. 490, VOORHEES v. JACKSON EX DEM. BANK OF THE UNITED STATES.

Syl. 2 (III, 595). Conclusiveness of confirmation of judicial sale.

Approved in Salemonson v. Thompson, 13 N. D. 194, 101 N. W. 323, judgment regularly rendered by court of competent jurisdiction is conclusive of debt and amount in action to try title by judgment creditor against alleged fraudulent grantee of debtor; Threadgill v. Colcord, 16 Okl. 471, 85 Pac. 710, applying rule to receiver's sale; dissenting opinion, Dye v. Crary, 12 N. M. 479, 78 Pac. 536, majority holding property levied on under alias attachment gives no jurisdiction over attachment; Clark v. Eltinge, 38 Wash. 382, 107 Am. St. Rep. 858, 80 Pac. 558, arguendo.

Distinguished in Dye v. Crary, 12 N. M. 471, 474, 78 Pac. 533, 534, property levied on under alias attachment gives no jurisdiction over property.

Syl. 4 (III, 602). Judgment without jurisdiction is void.

Approved in Harrigan v. Gilchrist, 121 Wis. 228, 99 N. W. 934, determining power of court which had appointed receiver for corporation who had lost some of property to make parties participating in loss defendants in pending suit and determine their liability.

10 Pet. 497-506, 9 L. 508, BROWN v. SWANN.

Syl. 2 (III, 608). Requisite averments of bill of discovery.

Approved in Larkey v. Gardner, 105 Va. 721, 54 S. E. 887, following rule.

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10 Pet. 507-520, 9 L. 512, COLUMBIA INS. CO. v. LAWRENCE.

Syl. 8 (III, 613). Insurance—Fire caused by negligence.

Approved in Beavers v. Security etc. Ins. Co., 76 Ark. 598, 90 S. W. 14, where policy did not exempt liability for loss of insured's negligence, it was error to charge that insurer not liable if loss occurred through negligence of insured or was result of his own wrong.

10 Pet. 524-531, 9 L. 519, DENN v. REID.

Syl. 1 (III, 616). Construction of unambiguous statute.

Approved in Farmers' Loan etc. Co. v. Sioux Falls, 131 Fed. 908, construing grant of franchise to water company to use city streets; Kaufman v. Carter, 67 S. C. 318, 45 S. E. 214, Rev. St. 1893, § 1432, relating to posting up of names of partners in mercantile partnership applies only to limited partnerships.

10 Pet. 532-571, 9 L. 522, PETER v. BEVERLY.

Syl. 1 (III, 617). Each executor liable for own acts.

Approved in Cheever v. Ellis, 144 Mich. 484, 108 N. W. 392, applying rule where loss occurred through fault of agent appointed by both executors, but one of them assumed through agent sole control of properties.

Syl. 5 (III, 618). Extinction of power by death of one trustee.

Approved in Haggart v. Ranney, 73 Ark. 348, 84 S. W. 704, power to sell and convey in will to executor named vests legal title in him with power to sell, as trustee under will and not by virtue of appointment by court; Weaver v. Richards, 144 Mich. 406, 407, 415, 108 N. W. 386, 387, 390, power appointing attorney to sell property of estate of decedent belonging to signers of power and to distribute proceeds, and reciting that it should be irrevocable and survive, is revoked by death of one grantor before execution.

Syl. 8 (III, 620). Note taken for antecedent debt.

Approved in Delaney etc. Co. v. The Winnebago, 142 Mich. 91, 105 N. W. 530, where builder's note taken for materials furnished for construction of vessel, but not paid, statutory lien not lost.

10 Pet. 572-582, 9 L. 538, DICKINS v. BEAL.

Syl. 4 (III, 622). Notary's testimony as to notice of dishonor.

Approved in Schofield v. Palmer, 134 Fed. 755, certificate of notary that he gave notice of dishonor is insufficient evidence thereof.

10 Pet. 583-595, 9 L. 542, WALLINGSFORD v. ALLEN.

Syl. 2 (III, 624). Validity of conveyance by husband to wife.

Approved in In re Tucker, 131 Fed. 648, transfer of stock by husband to wife as gift by surrendering certificates and causing new ones to be issued in her name, being void under law of domicile,

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its retransfer to him by wife as loan is no basis for claim by her against his bankrupt estate; James v. Gray, 131 Fed. 403, 404, 65 C. C. A. 385, loan made by wife to husband from separate estate is provable as debt against his estate in bankruptcy irrespective of its enforceability under state laws.

10 Pet. 596-617, 9 L. 547, BRENT v. BANK OF WASHINGTON.

Syl. 3 (III, 626). United States bound by equities.

Approved in Mountain Copper Co. v. United States, 142 Fed. 629, applying rule in suit by government as land owner to abate alleged nuisance caused by smelter; Lynch v. United States, 13 Okl. 145, 73 Pac. 1096, applying rule in suit to cancel townsite patent. See 101 Am. St. Rep. 170, note.

Syl. 5 (III, 627). Limitation statute bars remedy only.

Approved in Brand v. Brand, 116 Ky. 798, 76 S. W. 873, 63 L. R. A. 206, where plaintiff assigned note to A. for collection and defendant got judgment in New York on ground of limitations, such judgment no bar to action in Kentucky where different limitations exist.

10 Pet. 662-738, 9 L. 573, NEW ORLEANS v. UNITED STATES.

Syl. 1 (III, 628). Dedication without vesting title.

Approved in Evans v. Blankenship, 4 Ariz. 316, 39 Pac. 813, applying rule where land platted in recorded map as park.

Syl. 2 (III, 628). Accretions follow riparian title.

Approved in Missouri v. Nebraska, 196 U. S. 34, 35, 49 L. 375, 25 Sup. Ct. 155, avulsion by Missouri river, middle of whose channel forms boundary line between two states, works no change in boundary but leaves it in center of old channel.

Syl. 3 (III, 630). Dedication—Designation on map and user.

Approved in German Bank v. Brose, 32 Ind. App. 87, 69 N. E. 303, determining dedication of street by user; Kemp v. Stradley, 134 Mich. 678, 97 N. W. 41, under act authorizing council to construct wharves on public land and lease wharfing privileges, city may lease land and authorize lessee to build wharf.

Syl. 5 (III, 632). Public common cannot be granted.

Approved in Wilkins v. Chicago etc. R. R. Co., 110 Tenn. 450, 75 S. W. 1032, arguendo.

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XI PETERS.

11 Pet. 41-54, 9 L. 624, EWING v. BURNET.

Syl. 4 (III, 638). Entry under color of title is ouster.

Approved in Zerres v. Vanina, 134 Fed. 613, applying rule in ejectment by relocator; Jasperson v. Scharnikow, 150 Fed. 573, taking possession and occupancy of vacant land by mere squatter does not work disseisin of true owner; Swope v. Ward, 185 Mo. 325, 84 S. W. 897, where person claiming title to land by adverse possession entered in beginning under claim of ownership with intent to claim land, he is not mere squatter.

Syl. 13 (III, 643). Adverse possession—Payment of taxes.

Approved in McCaughn v. Young, 85 Miss. 293, 37 So. 842, applying rule to wild land where one paid taxes for long term, used timber thereon and mortgaged same, and offered it for sale to public.

11 Pet. 63-72, 9 L. 633, ALLEN v. HAMMOND.

Syl. 1 (III, 644). Relief against contract made by mistake.

Approved in Adams v. Washington Brick etc. Co., 38 Wash. 253, 80 Pac. 449, where lease of clay land made solely for purpose of using clay for brick-making, on exhaustion of clay before expiration of term, lessee could abandon premises.

11 Pet. 80-85, 9 L. 639, EVANS v. GEE.

Syl. 3 (III, 647). Blank indorsement—Order to pay individual.

Approved in Leahy v. Haworth, 141 Fed. 860, written assignment on back of promissory note payable to order of payee, signed by such payee, is equivalent of blank indorsement to transfer title to note free from equities; Consterdine v. Moore, 65 Neb. 293, 101 Am. St. Rep. 620, 91 N. W. 399, indorsement on note, "Pay to the order of . . . . without recourse," signed by payee, does not destroy negotiability in hands of bona fide purchaser.

11 Pet. 86-101, 9 L. 642, UNITED STATES v. LEFFLER.

Syl. 8 (III, 649). Surety—Signing on condition other signs.

Approved in Bunker v. Bunker, 140 N. C. 22, 52 S. E. 239, where, on accounting, claim for costs in prior suit filed as lien on realty belonging to estate payable out of rents by B, and disallowed and final judgment rendered providing that plaintiff recover certain sum and costs of action, and it was paid, judgment was res adjudicata of B.'s liability to pay costs of former suit from assets of estate.

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11 Pet. 102-161, 9 L. 648, CITY OF NEW YORK v. MILN.

Syl. 1 (III, 651). Commerce—Requiring report as to passengers.

Approved in Southern Ry. Co. v. Greensboro etc. Co., 134 Fed. 92, order of state corporation commission directing railroad to place cars loaded with coal shipped from another state on certain track for unloading, as requested by consignee, is void.

Syl. 6 (III, 654). State's jurisdiction within its territory.

See 101 Am. St. Rep. 159, note.

Syl. 7 (III, 656). Exclusive state police power.

Approved in dissenting opinion in Pabst Brewing Co. v. Crenshaw, 198 U. S. 41, 49 L. 935, 25 Sup. Ct. 552, majority upholding Missouri beer inspection act.

Syl. 8 (III, 656). State health laws valid.

Approved in State v. Hyman, 98 Md. 614, 57 Atl. 8, 64 L. R. A. 637, upholding act of 1902, relating to use of rooms and apartments under sweating system of labor.

Syl. 12 (III, 657). Congressional regulation of commerce in states.

Approved in United States v. Union Bridge Co., 143 Fed. 391, upholding 30 Stat. 1153, requiring alteration of bridges over navigable streams on determination by Secretary of War that they obstruct navigation.

11 Pet. 175-184, 9 L. 677, STEAMBOAT ORLEANS v. PHOEBUS.

Syl. 2 (III, 660). Admiralty—Accounts between part owners.

Distinguished in The Emma B., 140 Fed. 771, admiralty court may, as incidental to principal cause of action, decree accounting between owners of vessel, with respect to past earnings in suit for her sale for partition.

Syl. 3 (III, 661). Admiralty jurisdiction limited.

Approved in The Mary F. Chisholm, 129 Fed. 817, sale by merchant to fishermen, who are about to go on fishing voyage under lay contract, of tobacco, clothing and other articles for personal use, is not maritime transaction.

Syl. 8 (III, 664). Federal jurisdiction not conferred by local law.

Approved in Jung v. Myer, 11 N. M. 386, 68 Pac. 936, Laws 1901, c. 82, authorizing appeals to supreme court from interlocutory orders affecting substantial rights, conflicts with organic act providing that appeals are allowed to supreme court from final decisions in all cases, under rules prescribed by law.

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11 Pet. 213-225, 9 L. 691, WATERS v. THE MERCHANTS' LOUISVILLE INS. CO.

Syl. 3 (III, 672). Explosion caused by fire—Proximate cause.

Approved in Hall v. Insurance Co., 115 Tenn. 517, 92 S. W. 402, where policy excepted loss by explosion unless fire ensued, and then for fire only, and goods damaged solely by explosion in adjoining building, caused by fire therein, but without any fire in plaintiff's building, insurer not liable.

11 Pet. 257-350, 9 L. 709, BRISCOE v. THE BANK OF THE COMMONWEALTH OF KENTUCKY.

Syl. 6 (III, 677). Presumption as to state's powers from usage.

Approved in State v. Stimpson, 78 Vt. 132, 62 Atl. 17, 1 L. R. A. (N. S.) 1153, upholding prosecutions by information.

Syl. 7 (III, 678). State not suable without consent.

Approved in Berman v. Minnesota etc. Society, 93 Minn. 127, 100 N. W. 732, Minnesota state agricultural society is department of state and immune from suits for wrongful conduct of servants.

11 Pet. 351-419, 9 L. 746, LIVINGSTON v. STORY.

Syl. 2 (III, 680). Matter in abatement raised by plea.

Approved in Wetzel etc. Ry. Co. v. Tennis Bros. Co., 145 Fed. 464, where, in action by foreign corporation, defendant answered after demurrer overruled, and after replication defendant filed cross-bill and plaintiff answered it, after demurrer overruled, it is too late to plead in abatement plaintiff's alleged disability to sue because it had not complied with state laws.

(III, 680.) Miscellaneous. Cited in Moore v. Boagni, 111 La. 503, 35 So. 721.

11 Pet. 420-650, 9 L. 773, CHARLES RIVER BRIDGE v. WARREN BRIDGE.

Syl. 3 (III, 682). State grants strictly construed.

Approved in Blair v. Chicago, 201 U. S. 472, 50 L. 831, 26 Sup. Ct. 427, construing Illinois street railway corporation act of 1865; Knoxville Water Co. v. Knoxville, 200 U. S. 33, 50 L. 359, 26 Sup. Ct. 224, municipal grant of waterworks franchise does not devest city of power to construct its own waterworks; Manigault v. Springs, 199 U. S. 481, 50 L. 279, 26 Sup. Ct. 127, obligations of agreement to remove existing dam from navigable stream and to allow stream to remain unobstructed, not impaired by subsequent state statute authorizing construction of dam by private persons to drain lowlands; New York v. State Board of Tax Commrs., 199 U. S. 37, 50 L. 75, 25 Sup. Ct. 715, special franchise tax imposed by N. Y. Laws, 1899, c. 712, does not impair obligation of contracts by which right

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to construct and operate street railroads given in consideration of payment of per cent of earnings; Pabst Brewing Co. v. Thorley, 145 Fed. 126, where lessor obtained permit to build vault under sidewalk subject to revocation when space needed for public improvements and thereafter leased premises for purpose for which vault necessary, and thereafter vault permit revoked, lessor was liable for breach of covenant; Tillamook Water Co. v. Tillamook City, 139 Fed. 406, contract between city and water company, by which latter is granted franchise to lay pipes in streets and furnish inhabitants with water for term, does not bind city not to construct competing plant; Cleveland El. Ry. Co. v. City of Cleveland, 137 Fed. 123, construing city ordinances as not extending life of street railroad franchises; Green v. Ivey, 45 Fla. 349, 33 So. 714, refusing to enjoin defendant from operating ferry near complainant's, where latter's ferry franchise not exclusive; Commonwealth v. Boston Terminal Co., 185 Mass. 287, 70 N. E. 127, under Acts 1896, creating terminal company, there was no free grant of state lands below low-water mark; Peru v. Barrett, 100 Me. 217, 109 Am. St. Rep. 494, 60 Atl. 970, 70 L. R. A. 567, where merchant controls land on both sides of river and transports customers free from his warehouse on one side to store on other, he is liable to holder of nearby ferry franchise for profits; Story v. Woolverton, 31 Mont. 354, 355, 78 Pac. 590, act Cong. 1891, granting to Montana section of land of former military reservation to be selected so as to embrace improvements thereon, did not grant right to use of water of stream from which government took water by means of ditch across other lands; dissenting opinion in Houghton St. Ry. Co. v. Laurium Common Council, 135 Mich. 623, 98 N. W. 396, majority construing street-car franchise as authorizing connection with branch line. See 105 Am. St. Rep. 699, note.

XII PETERS.

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12 Pet. 11-26, 9 L. 980, SWAYZE v. BURKE.

Syl. 2 (III, 700). Fraud cognizable in law.

Distinguished in Levin v. Northwestern Nat. Ins. Co., 146 Fed. 77, in action at law in federal court on fire policy, award of arbitrators, fixing amount of loss, made according to policy and pleaded by defendant, cannot be impeached by plaintiff for fraud.

12 Pet. 32-58, 9 L. 989, BANK OF UNITED STATES v. DANIEL.

Syl. 5 (III, 702). Equitable relief against mistake.

Approved in Utermehle v. Norment, 197 U. S. 56, 49 L. 662, 25 Sup. Ct. 291, ignorance of rule that party taking benefit of provision in

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will in his favor is estopped to question validity of will, though coupled with ignorance of evidence on which contest based, does not prevent application of rule in absence of fraud; Burk v. Johnson, 146 Fed. 214, refusing to rescind contract assigning territory for promotion of burial associations under copyrighted plan, because of misrepresentation concerning rights under copyright, and that plan was not subject to supervision by state insurance departments; Scott v. Ford, 45 Or. 544, 78 Pac. 746, 68 L. R. A. 469, where will left property to five children and executor paid sixth share to child of one of deceased children, executor cannot recover.

12 Pet. 59-65, 9 L. 999, BRADSTREET v. THOMAS.

Syl. 1 (III, 705). Waiver of want of allegation of citizenship.

Approved in North Jersey etc. Ry. Co. v. Purdy, 142 Fed. 957, where no objection was made in trial court to sufficiency of proof to sustain obligation of plaintiff's citizenship for jurisdictional purposes, question of want of jurisdiction on that ground not considered on appeal.

12 Pet. 72-83, 9 L. 1004, UNITED STATES v. COOMBS.

Syl. 4 (III, 707). Commerce—Regulation of navigation.

Approved in United States v. Union Bridge Co., 143 Fed. 891, upholding 30 Stat. 1153, relating to alteration of bridges over navigable streams on determination of Secretary of War that they obstruct navigation.

12 Pet. 91-100, 9 L. 1012, GEORGETOWN v. ALEXANDRIA CANAL CO.

Syl. 4 (III, 710). Abatement of public nuisance.

Approved in State v. Louisiana etc. Gravel Road Co., 116 Mo. App. 199, 92 S. W. 161, upholding injunction where gravel road company was unlawfully exacting tolls from persons using public highway; Wilkins v. Chicago etc. R. R. Co., 110 Tenn. 463, 75 S. W. 1036, property owners who have no special interest different from that of other inhabitants as to period for which city contracts extend cannot restrain execution of contracts because they are too long; Van Alstyne v. Morrison, 33 Tex. Civ. 672, 77 S. W. 657, arguendo.

Syl. 5 (III, 711). Injunction against nuisance.

Approved in Conradt v. Miller, 2 Alaska, 436, injunction lies to prevent building of wharves or warehouses by private persons on public highway or navigable streams in front of plaintiff's property, where he shows special injury; West & Severns v. Ponca City Milling Co., 14 Okl. 648, 79 Pac. 101, refusing to enjoin erection of frame building within fire limits.

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12 Pet. 143, 144, 9 L. 1033, SARCHET v. UNITED STATES.

Syl. 1 (III, 716). Supreme court—Cases appealed to circuit.

Approved in Comstock v. Eagleton, 196 U. S. 100, 49 L. 403, 25 Sup. Ct. 210, judgment of supreme court of Oklahoma affirming judgment of lower court on demurrer to petition for false imprisonment can only be reviewed in supreme court on writ of error.

12 Pet. 151-163, 9 L. 1035, ZACHARIE v. FRANKLIN.

Syl. 1 (III, 718). Signing by mark.

Approved in Loughren v. Bonniwell, 125 Iowa, 520, 106 Am. St. Rep. 319, 101 N. W. 288, upholding sufficiency of subscription to notice by justice of peace with stamp bearing fac-simile of signature; Agurs v. Belcher, 111 La. 380, 100 Am. St. Rep. 485, 35 So. 608, where body of act of sale gave true name, but name at foot of deed signed by mark was written differently by notary, it was notice sufficient to put subsequent purchaser on inquiry.

12 Pet. 164-173, 9 L. 1041, CLARKE v. MATTHEWSON.

Syl. 1 (III, 718). Executor as real party in interest.

Distinguished in Brown v. Fletcher, 140 Fed. 641, Rev. St. 955, relating to revival of actions abated by death of party, has no application to suits in equity.

Syl. 2 (III, 718). Attached jurisdiction—Change in parties.

Approved in Kirby v. American Soda etc. Co., 194 U. S. 146, 48 L. 913, 24 Sup. Ct. 619, upholding jurisdiction of circuit court where cross-bill seeks to recover balance of $1,700, due on contract of exchange, where original bill, dismissed on complainants' motion, asked cancellation of agreement to pay $2,025, in consideration of exchange; O'Connor v. O'Connor, 146 Fed. 997, equity suit in federal court to set aside judgment of dismissal in same court is ancillary to such action, and where defendants named in bill were privies with parties to original action, service may be made on them, though they reside out of district.

12 Pet. 178-200, 9 L. 1046, CLARKE v. WHITE.

Syl. 1 (III, 721). Specific performance of personalty contracts.

Approved in Kane v. Luckman, 131 Fed. 619, refusing specific performance of oral contract for purchase of cows in exchange for land, where it was indefinite and incomplete.

Syl. 4 (III, 722). Setting aside transaction for fraud.

Approved in Kessler v. Ensley, 141 Fed. 148, applying rule where land purchased of company by former director, and by corporation of which he was large stockholder from trustees, to whom it had been conveyed under agreement between stockholders and creditors; In re A. L. Robertshaw Mfg. Co., 133 Fed. 560, where debtor conveyed

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property to certain creditors, with intent to pay debts owing to them, facts that transfer postponed other creditors, as intended, and that creditor aided in such intent, does not invalidate transfer.

Syl. 9 (III, 722). Secret agreement on composition with creditors.

Approved in Wheeler v. Pettyjohn, 14 Okl. 76, 77, 76 Pac. 119, following rule.

Syl. 10 (III, 722). Debtor may prefer creditor.

Approved in Price v. Winnebago Nat. Bank, 14 Okl. 278, 79 Pac. 108, following rule.

12 Pet. 207-214, 9 L. 1058, ADAMS v. JONES.

Syl. 2 (III, 724). Notice to guarantor of future advances.

Approved in dissenting opinion in Cowan v. Roberts, 134 N. C. 426, 101 Am. St. Rep. 845, 46 S. E. 983, 65 L. R. A. 729, majority holding where one signed written guaranty, to be delivered only on condition that it be signed by another and delivered to debtors, who delivered it to creditors without securing other signature, and creditor, having no notice of condition, extended credit on faith of guaranty, guarantor is liable.

12 Pet. 221-233, 9 L. 1063, ROGERS v. BATCHELOR.

Syl. 3 (III, 728). Use of firm funds to pay individual debts.

Approved in Hier v. Miller, 68 Kan. 265, 75 Pac. 79, 63 L. R. A. 952, where bank cashier undertakes to pay individual debt to depositor by crediting amount on passbook and permits latter to check out, bank may recover of creditor.

12 Pet. 241-263, 9 L. 1070, JENKINS v. PYE.

Syl. 3 (III, 731). Deed to parent valid.

Distinguished in Ferns v. Chapman, 211 Ill. 607, 71 N. E. 1110, holding in suit to set aside for undue influence deed from son to father shortly after child comes of age, burden is on father to rebut presumption of improper influence.

12 Pet. 264-299, 9 L. 1079, GALLOWAY v. FINLEY.

Syl. 1 (III, 732). Vendee cannot disown vendor's title.

Approved in Petraski v. Minzgohr, 144 Mich. 358, 108 N. W. 78, following rule.

Syl. 3 (III, 733). Vendee perfecting title reimbursed.

Approved in Holloway v. Miller, 84 Miss. 781, 36 So. 533, where vendee, finding title was in United States, retained possession and perfected title in himself without notice to vendor, he can only recover sums expended and other damages caused by breach of warranty.

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12 Pet. 300-338, 9 L. 1093, TOLAND v. SPRAGUE.

Syl. 4 (III, 735). Circuit court's process outside district.

Approved in American etc. Colony Co. v. Schuler, 34 Tex. Civ. 566, 79 S. W. 374, where foreign corporation acquired lands in Texas, courts of latter cannot forfeit its charter.

Syl. 7 (III, 737). Appearance waives service in district.

Approved in Iowa etc. Min. Co. v. Bliss, 144 Fed. 449, where alien brought suit in state court against nonresident corporation, suit was removable to federal court by defendant.

Syl. 10 (III, 739). Rendition of account does not make stated.

Approved in Gillett v. Chavez, 12 N. M. 370, 78 Pac. 73, where statement of affairs of firm made by one of partners, who acted as firm's clerk merely, as basis for future settlement, fact that senior partner retained account without objecting thereto does not render it account stated.

12 Pet. 345-377, 9 L. 1111, HEPBURN v. DUBOIS.

Syl. 5 (III, 743). Finding of jury concluded defeated party.

Approved in Eureka Co. Bank v. Clark, 130 Fed. 326, 64 C. C. A. 571, finding of fact by court precludes appellate court from weighing evidence for purpose of determining whether findings justified thereby.

12 Pet. 410-471, 9 L. 1137, STROTHER v. LUCAS.

Syl. 4 (III, 746). Property rights on cession.

Approved in O'Reilly DeCamara v. Brooke, 135 Fed. 391, exclusive franchise to slaughter cattle in Havana granted by Spain is property which cannot be taken away by military governor of Cuba without compensation; Territory v. Delinquent Taxpayers, 12 N. M. 66, 73 Pac. 622, lands embraced in perfect Mexican land grant are taxable though grant submitted to confirmation by court of private land claims and patent not yet issued.

Syl. 7 (III, 747). Grant evidences own validity.

Approved in McGuire v. Blount, 199 U. S. 146, 50 L. 129, 26 Sup. Ct. 1, judicial sale had during Spanish control of Florida not defeated by technical objections, where sale had been confirmed as sufficient by land title commissioners.

12 Pet. 472-475, 9 L. 1161, POULTNEY v. CITY OF LA FAYETTE.

(III, 751.) Miscellaneous. Cited in Meyers v. United States, 5 Okl. 185, 48 Pac. 189, as to power of Land Department to promulgate rule for reopening of case on equitable grounds.

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12 Pet. 488-496, 9 L. 1167, EX PARTE SIBBALD v. UNITED STATES.

Syl. 3 (III, 755). Correction of judgment after term.

Approved in King v. Davis, 137 Fed. 227, federal law court cannot vacate judgment of former term founded on false, but apparently valid, return of service of process; United States v. Four Lorgnette Holders, 132 Fed. 565, judgment of forfeiture for attempt to defraud customs laws cannot be vacated on petition filed after term, to permit importer to defend on ground of irregularities in procedure; dissenting opinion in State v. Marsh, 134 N. C. 200, 47 S. E. 12, 67 L. R. A. 179, majority holding, where on appeal conviction reversed because of omission of material allegation in indictment as contained in record, and it subsequently appeared that allegation was omitted by misprision of clerk, supreme court could, after term, grant certiorari to correct record, and reset case.

Syl. 5 (III, 756). Execution of mandate of appellate court.

Approved in Montana Min. Co. v. St. Louis etc. Co., 147 Fed. 903, where circuit court of appeals affirmed judgment for plaintiff, but subsequently on cross-writ reversed judgment on different questions and ordered new trial, questions determined on two appeals will not be reconsidered on error from second judgment; American etc. Co. v. Sample, 136 Fed. 858, where circuit court of appeals has adjudged invalid claims of patent in issue in infringement suit, reversing circuit court, and ordering decree in conformity with opinion, circuit court cannot grant rehearing on ground that complainant has filed disclaimer in patent office; State v. District Court, 32 Mont. 24, 79 Pac. 411, where order taxing costs in favor of plaintiff and included in judgment did not include certain item, trial court could not, after affirmance on appeal, make order taxing such costs. See 98 Am. St. Rep. 904, note.

Syl. 7 (III, 758). Construction of appellate mandate.

See 98 Am. St. Rep. 905, note.

(III, 753.) Miscellaneous. Cited in dissenting opinion State v. Marsh, 134 N. C. 192, 47 S. E. 9, 67 L. R. A. 179, on point that when government litigates with citizen, it has no superior rights by virtue of sovereignty.

12 Pet. 524-653, 9 L. 1181, KENDALL v. UNITED STATES.

Syl. 2 (III, 764). Mandamus to compel ministerial duty.

Approved in Traynor v. Beckham, 116 Ky. 24, 74 S. W. 1108, granting mandamus to compel governor to issue commission to police judge legally appointed by city council; McDaid v. Territory, 1 Okl. 97, 30 Pac. 440, upholding territorial district court's jurisdiction to issue mandamus compelling townsite trustees to issue deed to party they have decided is entitled to same; Clement v. Graham, 78 Vt.

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319, 63 Atl. 155, granting mandamus to compel state auditor of accounts to permit inspection of record. See 98 Am. St. Rep. 874, note.

Syl. 5 (III, 768). Mandamus defined.

Approved in dissenting opinion in Henry v. State, 87 Miss. 95, 39 So. 884, arguendo.

Syl. 6 (III, 768). Mandamus to enforce right—Adequacy of remedies.

Approved in Barber Asphalt etc. Co. v. Morris, 132 Fed. 955, 67 L. R. A. 761, 66 C. C. A. 55, granting mandamus to command circuit judge to vacate order staying proceedings pending determination of state court appeals; State v. United States Exp. Co., 95 Minn. 444, 104 N. W. 557, denying mandamus to compel express company to receive package from one engaged in lottery scheme; In re Epley, 10 Okl. 644, 64 Pac. 21, judgment granting peremptory mandamus is reviewable on appeal same as any other law judgment; Rider v. Brown, 1 Okl. 247, 32 Pac. 342, better practice is for writ of mandamus to issue in name of territory on relation of party interested. See 98 Am. St. Rep. 865, note.

Syl. 13 (III, 770). Supreme court's mandamus to inferior court.

Approved in Ex parte Morán, 144 Fed. 596, upholding jurisdiction of circuit court of appeals to issue habeas corpus to determine power of Oklahoma court to imprison one convicted of capital crime; Barber Asphalt etc. Co. v. Morris, 132 Fed. 952, 67 L. R. A. 761, 66 C. C. A. 55, granting mandamus to compel circuit judge to vacate order staying proceedings pending determination of state court appeals.

Syl. 15 (III, 770). Requisites of jurisdiction over person.

Approved in Kibbler v. St. Louis etc. R. Co., 147 Fed. 880, foreign corporation is not suable in federal court in state unless it does business in some one of the counties within territorial jurisdiction of such court.

Syl. 16 (III, 770). District of Columbia court issues mandamus.

Approved in McDaid v. Territory, 1 Okl. 97, 30 Pac. 440, upholding territorial district court's jurisdiction to issue mandamus to compel townsite trustees to execute deed to party whom they have decided is entitled to same.

Syl. 19 (III, 772). Construction of adopted statutes.

Approved in Ex parte Anderson, 46 Tex. Cr. 399, 81 S. W. 987, city court has no jurisdiction to try accused for violation of state penal statute.

Syl. 20 (III, 772). Federal court's mandamus to executive officers.

Approved in United States v. Lake Shore etc. Ry. Co., 197 U. S. 542, 49 L. 871, 25 Sup. Ct. 538, circuit court has no jurisdiction over original proceeding by mandamus to compel interstate carrier to make report which interstate commerce commission is authorized by commerce act to require.

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(III, 763.) Miscellaneous. Cited in dissenting opinion in Tampa Waterworks Co. v. Tampa, 199 U. S. 247, 50 L. 175, 26 Sup. Ct. 23, majority holding provision of state constitution giving legislature full power to correct abuses and prevent excessive charges is self-executing to extent that contracts made after its passage are subject to possibility of exercise of such power.

12 Pet. 657-754, 9 L. 1233, RHODE ISLAND v. MASSACHUSETTS.

Syl. 1 (III, 774). Jurisdiction defined.

Approved in Blake v. Nesbet, 144 Fed. 283, fact that defendant claims as his own money admitted to have been paid to him by bankrupt within four months of bankruptcy, on ground that payment was made to him as creditor, does not affect bankruptcy court's jurisdiction in suit by trustee to recover money as preference to issue injunction against disposing of same; Franklin Union v. People, 220 Ill. 366, 110 Am. St. Rep. 248, 77 N. E. 180, it is no defense to contempt proceedings for violation of injunction that injunction is broader than justified by bill; O'Brien v. People, 216 Ill. 363, 108 Am. St. Rep. 219, 75 N. E. 112, defects in bill to enjoin strikers does not affect jurisdiction when defendants served but did not appear; Parker v. Lynch, 7 Okl. 647, 56 Pac. 1087, upholding jurisdiction to declare resulting trust in land acquired by homestead entry.

Syl. 3 (III, 776). Appearance waives defect in service.

Approved in Alabama etc. School v. Addler, 144 Ala. 557, 42 So. 117, under constitutional provision that state cannot be sued, judgment against Alabama Girls' Industrial School is against state, and void for want of jurisdiction, and failure of defendant to claim immunity is not waiver.

Syl. 10 (III, 778). Constitution—Exceptions not implied.

Approved in Ex parte Anderson, 46 Tex. Cr. 380, 81 S. W. 976, city court has no jurisdiction to try accused for alleged violation of state penal statute.

Syl. 11 (III, 778). Constitutional construction—Contemporaneous history.

Approved in Ex parte Anderson, 46 Tex. Cr. 399, 81 S. W. 987, city court has no jurisdiction to try accused for alleged violation of state penal statute.

Syl. 14 (III, 778). Jurisdiction to determine state boundary.

Approved in Missouri v. Illinois, 200 U. S. 520, 50 L. 578, 26 Sup. Ct. 268, determining jurisdiction of supreme court to enjoin discharge of sewage of Chicago through canal into Mississippi on complaint of Missouri that water supply of its inhabitants contaminated.

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XIII PETERS.

13 Pet. 6-16, 10 L. 33, WHITING v. BANK OF UNITED STATES.

Syl. 7 (III, 785). No bill of review after five years.

Approved in Jorgensen v. Young, 136 Fed. 381, 69 C. C. A. 222, bill of review in equity court not filed until after lapse of two years from judgment in original suit, and until long after expiration of time to appeal is too late.

13 Pet. 26-44, 10 L. 42, SMITH v. RICHARDS.

Syl. 2 (III, 789). Contract—Rescission—False representations.

Approved in Kell v. Trenchard, 142 Fed. 23, applying rule where plaintiff purchased timber land under contract stating timber to be not less than certain amount, and on estimation of amount defendant's agent by false representations as to boundaries deceived plaintiff as to amount; Kimber v. Young, 137 Fed. 748, 70 C. C. A. 178, determining sufficiency of allegations in action for deceit in sale of bonds.

13 Pet. 45-64, 10 L. 51, ROSS v. DUVAL.

Syl. 1 (III, 791). Applying state practice—Statute.

Distinguished in King v. Davis, 137 Fed. 239, Va. Code 1887, § 3566, providing lis pendens shall not affect bona fide purchaser, unless memorandum filed with clerk of court in county where land lies does not apply to federal courts.

Syl. 2 (III, 791). Burden of showing statutory exception.

Approved in Bealmear v. Hutchins, 134 Fed. 266 (reversed 148 Fed. 545), under Rev. St. N. C. 1837, c. 42, § 1, one claiming entry of Cherokee lands has burden of showing on face of grant itself that land was at time vacant and unsurveyed.

Distinguished in Bealmear v. Hutchins, 148 Fed. 558 (reversing 134 Fed. 257), under Pub. Laws N. C. 1835, p. 7, c. 6, as amended in 1837, grant of Cherokee lands issued pursuant to authority of such law is presumptively of vacant and unsurveyed lands, and sufficient to maintain ejectment.

Syl. 3 (III, 791). Bar of judgment bars execution.

Approved in Miller v. Melone, 11 Okl. 251, 67 Pac. 482, 56 L. R. A. 620, creditor's bill seeking to set aside fraudulent sale is barred where plaintiff's judgment becomes dormant pending suit.

Syl. 6 (III, 792). Limitations—Pre-existing causes.

See 111 Am. St. Rep. 461, note.

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13 Pet. 65-80, 10 L. 61, ANDREWS v. POND.

Syl. 2 (III, 793). Usury—Charge for exchange as.

Approved in In re Troy & Cohoes Shirt Co., 136 Fed. 427, arguendo.

Syl. 5 (III, 794). Contracts—Lex loci governs.

Approved in Easton v. Geo. Wostenholm & Son, 137 Fed. 530, 70 C. C. A. 108, where firm doing business in California and Costa Rica bought goods in England through purchasing agent, under agreement that agent in England should advance price and expenses for commission, agent's contract governed by English law; Nashua Sav. Bank v. Sayles, 184 Mass. 522, 100 Am. St. Rep. 573, 69 N. E. 310, arguendo.

Syl. 7 (III, 795). Law governing interest in contracts.

Approved in Davis v. Tandy, 107 Mo. App. 449, 81 S. W. 460, where note is usurious under laws of state where made and also where payable, and under laws of latter state mortgage securing it is void for usury, but is not void by laws of former state, mortgage is enforceable in latter state under limitations placed on it in former.

13 Pet. 89-106, 10 L. 72, BRADLEY v. WASHINGTON ETC. STEAM PACKET CO.

Syl. 1 (III, 799). Parol to explain writing.

Approved in Simpson v. United States, 199 U. S. 399, 50 L. 246, 26 Sup. Ct. 54, construing contract to furnish beef to interior army posts in Cuba; Guaranty Trust Co. v. Atlantic etc. R. Co., 138 Fed. 521, affirming 132 Fed. 71, construing railroad mortgage giving lien on after-acquired property; Darnell v. Lafferty, 113 Mo. App. 303, 88 S. W. 791, memorandum evidencing sale of personalty described as "ten head of cows and heifers" is sufficiently definite in description of subject matter to satisfy statute of frauds; Humphrey v. Timken Carriage Co., 12 Okl. 432, 75 Pac. 534, where complaint sets out order for goods and alleges acceptance and shipment, defendant may show by parol that order was not accepted on terms proposed.

13 Pet. 107-122, 10 L. 81, BANK OF UNITED STATES v. LEE.

Syl. 5 (III, 802). Estoppel of wife by silence.

Approved in Mutual Reserve Fund etc. Ins. Co. v. Scott, 136 N. C. 160, 48 S. E. 583, defendant in default judgment cannot set it aside for fraud, consisting of false allegations and proofs, which were known to him at time judgment was rendered.

Syl. 6 (III, 802). Sales of personalty valid where made.

Approved in Cooper v. Philadelphia Worsted Co. (Lees v. Harding etc. Co.), 68 N. J. Eq. 631, 60 Atl. 356, Public Laws 1889, p. 421, relating to conditional sales, does not apply to contracts made and to be performed in another state with reference to chattels situated there between president of that state and a New Jersey corporation;

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Greenville Nat. Bk. v. Evans-Snyder-Buell Co., 9 Okl. 369, 60 Pac. 254, mortgage executed in another state on property situated there and recorded according to laws of such state is valid after such property is brought into Oklahoma without being filed.

13 Pet. 123-127, 10 L. 89, BANK OF UNITED STATES v. PETER.

Syl. 1 (III, 803). Junior encumbrancer paying prior.

See 99 Am. St. Rep. 521, note.

13 Pet. 136-152, 10 L. 95, WALLACE v. McCONNELL.

Syl. 4 (III, 804). Concurrent jurisdiction—Priorities.

Approved in Louisville Trust Co. v. Knott, 130 Fed. 825, 65 C. C. A. 158, where corporation's franchise had expired and assets delivered to liquidator, and minority stockholders filed bill in state court to ascertain assets and liabilities and sell and distribute assets, and majority appeared in such suit, and pending suit creditor had federal receiver appointed, state court entitled to priority though receiver took assets; Logan County v. McKinley etc. Trust Co., 70 Neb. 405, 97 N. W. 644, where foreclosure decree erroneously denies to owner of equity of redemption the time to redeem allowed by law, he cannot obtained modification by objecting to confirmation of sale.

13 Pet. 181-194, 10 L. 115, STOKES v. SALTONSTALL.

Syl. 1 (III, 810). Care required of carrier of passengers.

Approved in Cavin v. Southern Pac. Co., 136 Fed. 593, 69 C. C. A. 366, in action by mail clerk for injuries caused by derailment due to washout, it is error to charge that defendant only required to use such care as reasonably careful man would exercise in management of dangerous business; The Oregon, 133 Fed. 617, 68 C. C. A. 603, giving damages to passengers for failure of Nome steamer to furnish sufficient provisions and to be kept clean; Fillingham v. St. Louis Transit Co., 102 Mo. App. 584, 77 S. W. 317, upholding charge that carrier is held to utmost care and vigilance, accompanied by recital of particular facts which will sustain recovery; Taillon v. Mears, 29 Mont. 174, 74 Pac. 425, under Civ. Code, § 2790, carrier is liable for injuries to passenger caused by negligent acts of his servant, even though the acts complained of were not within scope of servant's employment; Williams v. Spokane Falls etc. Ry. Co., 39 Wash. 89, 80 Pac. 1103, applying rule where in making up train coupler gave way and cars ran into mail car, in which plaintiff was working, and injured him.

Distinguished in Stanley v. Steele, 77 Conn. 693, 60 Atl. 641, 69 L. R. A. 561, livery-stable keeper is not held to such degree of care with reference to defects in vehicles as common carrier of passenger.

Syl. 3 (III, 812). Carriers—Presumptions from accident.

Approved in Southern Pac. Co. v. Cavin, 144 Fed. 351, following rule; Cincinnati etc. Ry. Co. v. South Fork Coal Co., 139 Fed. 533,

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where as result of rear end collision oil cars telescoped and sparks from engine started fire, which burned lumber piled on right of way, presumed that collision due to negligence in operation of trains; Burr v. Knickerbocker etc. Co., 132 Fed. 249, 65 C. C. A. 554, where tug moving schooner from dock to wider part of channel, to be there turned and headed for sea, ran aground on calm day with moderate tide, prima facie case of negligence shown; Denver Con. Tramway Co. v. Rush, 19 Colo. App. 73, 78, 73 Pac. 664, 666, applying principle where passenger injured while alighting from car because of sudden starting of car; Redmon v. Metropolitan St. Ry. Co., 185 Mo. 9, 105 Am. St. Rep. 558, 84 S. W. 28, in action by street-car passenger, showing that car came to sudden stop and passenger was thrown from his seat and injured, made prima facie case; St. Louis etc. Ry. Co. v. Parks, 97 Tex. 135, 76 S. W. 742, in action for injuries to passenger, when carrier introduces evidence to show it has used all proper care to avoid accident, charge that fact of injury is prima facie evidence of negligence which defendant may rebut by showing due care is improper; Firebough v. Seattle Elec. Co., 40 Wash. 662, 82 Pac. 997, 2 L. R. A. (N. S.) 836, applying rule where street-car passenger injured on jumping out when controller blew up. See 113 Am. St. Rep. 992, 1021, note.

Syl. 4 (III, 815). Negligence—Acts in apprehension of injury.

Approved in Omaha Water Co. v. Schamel, 147 Fed. 506, where fire started through negligence of defendants' employee and flames shut off stairs, though some persons ran through them to stairs, plaintiff not negligent in jumping from window.

Distinguished in Chretien v. New Orleans Ry. Co., 113 La. 766, 104 Am. St. Rep. 519, 37 So. 718, where decedent was passenger on car and wire fell and struck car and loud explosion occurred, scaring decedent so that he jumped off and was killed, carrier is not liable, neither car nor other passengers being injured.

13 Pet. 195-204, 10 L. 123, CLARK v. SMITH.

Syl. 2 (III, 817). Administering state law creating property rights.

Approved in Mathews S. Co. v. Mathews, 148 Fed. 493, Rev. Laws Mass., c. 159, § 3, cl. 7, providing that supreme and superior courts shall have jurisdiction in equity of creditors' suits to reach property of debtor which cannot be attached or executed upon at law, is not enforceable in federal courts; Ames Realty Co. v. Big Indian etc. Co., 146 Fed. 174, 175, 176, applying rule to equity suit where under Montana Code in action to protect water rights plaintiff may make any or all persons who have diverted water from same stream parties; United States Min. Co. v. Lawson, 134 Fed. 771, 67 C. C. A. 587, remedy given by Utah statute authorizing suit to quiet title without previous adjudication of title in law action, and without reference to possession, is enforceable in federal court.

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ied in Illinois Life Ins. Co. v. Newman, 141 Fed. 453, enjoin collection of state tax on ground of its illegality state authorized such action.

24, 10 L. 129, STEIN v. BOWMAN.

, 822). Wife as witness against husband.

in Brock v. State, 44 Tex. Cr. 342, 100 Am. St. Rep. 859, , 60 L. R. A. 465, wife is incompetent witness against prosecution for rape though no objection raised by hus-

, 823). Deposition of absent witness.

in Toledo Traction Co. v. Cameron, 137 Fed. 60, 65, 69 permitting reading of testimony of witness given on where he is without district and more than one hundred from place of trial.

62, 10 L. 138, EX PARTE HENNEN.

, 824). Removal of officers at pleasure.

in Hartigan v. United States, 196 U. S. 174, 49 L. 436, 204, West Point cadet may be dismissed summarily by ole v. Territory of Arizona, 5 Ariz. 141, 48 Pac. 218, easurer appointed by the governor after the adoption of . 3049, may be removed at any time; State v. Maroney, 90 S. W. 147, under Laws 1903, p. 170, election commis- ot remove judge or clerk without charges and notice

ied in Christy v. City of Kingfisher, 13 Okl. 593, 76 der statute, marshal of city of first class cannot be re- ause without notice of charges.

, 826). Discretion to remove officer—Grounds.

in Ward v. Board of Regents, 138 Fed. 378, where act board of regents of college authorized board to remove enever interests of college required, in absence of fraud liable in damages for discharging professor before ter- contract of employment; dissenting opinion in Mial v. 4 N. C. 177, 46 S. E. 976, 65 L. R. A. 697, majority hold- pointed for a definite time to public office has no vested ein or contract right thereto.

ed in Mial v. Ellington, 134 U. S. 142, 46 S. E. 965, 65 , an officer appointed for a definite time to public office d interest therein or contract right thereto.

, 826). Officers—Appointment of successor is removal.

ied in Board of Education v. Territory, 12 Okl. 301, 70 pointment of new commission to locate site for normal act of 1901, after time for appointment of commission is void.

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13 Pet. 279-291, 10 L. 161, EX PARTE HOYT.

Syl. 1 (III, 829). Mandamus to compel judgment.

Approved in Cattermole v. Ionia Circuit Judge, 136 Mich. 280, 99 N. W. 4, mandamus does not lie to review the action of circuit judge in quashing a writ of capias ad respondendum and to compel the setting aside of the order.

Syl. 2 (III, 829). Mandamus to correct erroneous inferior judgment.

Approved in Barber Asphalt etc. Co. v. Morris, 132 Fed. 955, 67 L. R. A. 761, 66 C. C. A. 55, upholding jurisdiction of circuit court of appeals to grant mandamus to compel circuit court to vacate order staying proceedings pending state court appeals. See 98 Am. St. Rep. 892, note.

13 Pet. 294-301, 10 L. 168, VAN NESS v. HYATT.

Syl. 2 (III, 830.) Mortgage vests legal title in mortgagee.

Approved in Lefmann v. Brill, 142 Fed. 48, wife who recovered decree against husband in suit for maintenance which awarded her specific property, including realty, upon which husband had prior to suit executed mortgage of his interest, cannot avoid mortgage on ground that it was made to defeat claim for maintenance.

13 Pet. 312-330, 10 L. 177, McELMOYLE v. COHEN.

Syl. 3 (III, 832). No execution on foreign judgments.

Approved in Lamb v. Powder Riv. etc. Co., 132 Fed. 440, 67 L. R. A. 558, 65 C. C. A. 570, holding void Colorado act of 1895, as amended in 1899, prescribing limitation for actions on foreign judgments, as applied to action on foreign judgment based on contract and rendered prior to passage of act on cause of action, accruing more than six years prior thereto; In re Culp, 2 Cal. App. 82, 83 Pac. 94, judgment of sister state giving petitioner in habeas corpus right to custody of child cannot be enforced in habeas corpus proceedings for possession of child. See 103 Am. St. Rep. 312, 313, note.

Syl. 6 (III, 835). Limitations governed by lex fori.

Approved in Rankin v. Barton, 69 Kan. 632, 77 Pac. 532, an action to enforce the individual liability of a stockholder in a national bank is governed by statute of limitations of state where action is brought.

Syl. 7 (III, 837). Limitation on action on foreign judgments.

Approved in Lamb v. Powder Riv. etc. Co., 132 Fed. 438, 67 L. R. A. 558, 65 C. C. A. 570, holding void Colorado act of 1895 as amended by act of 1899, prescribing limitation for actions on foreign judgments, as applied to action on foreign judgment based on contract and rendered prior to passage of act on cause of action which accrued more than six years prior thereto; Terry v. Heisen, 115 La. 1083, 40

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ding article 233 of Constitution of 1898, establishing
f three years against actions to annul tax sales.

837). Foreign judgment—Priority in marshaling assets.

Murray v. Farrell, 2 Alaska, 363, where one became
ontana and before debt barred he removed to Alaska,
debt in Alaska, limitation statutes of that territory

7, 10 L. 200, STORY v. LIVINGSTON.

840). Exceptions to master's report.

General Fire Extinguisher Co. v. Lamar, 141 Fed. 355,
; Neher v. Armijo, 11 N. M. 83, 66 Pac. 519, applying
rors in referee's report.

842). Interested persons are necessary parties.

In re E. T. Kenney Co., 136 Fed. 455, beneficial inter-
s in net proceeds of claims assigned to liquidating com-
dministering trust, not provable in bankruptcy.

Miscellaneous. Cited in Brown v. Fletcher, 140 Fed.
se of action involved in suit in equity has passed by
devise from estate of deceased complainant to another,
revived; Ex parte Marks, 136 Fed. 170, 69 C. C. A. 80,
, after appeal, directed trial court to take such further
according to right and law ought to be had, court
rtaining mistake in computation of judgment, correct

0, 10 L. 209, WILCOX v. HUNT.

844). Contracts—Lex fori governs enforcement.

Supreme Lodge, Knights of Pythias v. Meyer, 198 U.
1149, 25 Sup. Ct. 754, applying rule to question as to
lation of physician and patient so as to exclude former's
ark v. Eltinge, 38 Wash. 383, 107 Am. St. Rep. 858,
narried woman as debtor is entitled only to those ex-
ided by statutes of state of her residence and of place

8, 10 L. 221, EX PARTE WHITNEY.

846). Mandamus to compel equity practice.

d in Barber Asphalt etc. Co. v. Morris, 132 Fed. 956,
1, 66 C. C. A. 55, granting mandamus to compel circuit
te order staying proceedings pending determination of
peals.

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13 Pet. 309-414, 10 L. 223, EMERSON'S HEIRS v. HALL.

Syl. 2 (III, 848). Claims under private acts.

Approved in United States v. Foreman, 5 Okl. 253, 48 Pac. 97, one suing government for recovery of money paid for land on which erroneous entry was canceled need not show surrender of duplicate certificate to Secretary of Interior nor relinquishment of all claims to land.

Distinguished in Nutt v. Forsythe, 84 Miss. 219, 36 So. 248, where Congress appropriated a sum of money to the administrator of a decedent in payment of a claim of the decedent against the United States, the representatives of deceased heirs are entitled to share with living heirs in the distribution thereof.

13 Pet. 423-435, 10 L. 229, ANTHONY v. BUTLER.

Syl. 1 (III, 849). Partner's deed does not bind other.

Approved in Runner v. Woitke, 2 Alaska, 395, realty held by mercantile firm cannot be sold by one partner without written authority.

13 Pet. 436-458, 10 L. 235, BAGNELL v. BRODERICK.

Syl. 8 (III, 853). Patent is conclusive of legal title.

Approved in Schurmeier v. Connecticut etc. Ins. Co., 137 Fed. 47, 69 C. C. A. 22, federal court may entertain suit in equity to permit presentation of probate claim after time limited by order of Minnesota probate court and within eighteen months allowed by statute; Tyee Consol. Min. Co. v. Langstedt, 136 Fed. 127, 69 C. C. A. 548, as against locator of mining claim there is no disseisin sufficient to start limitations prior to issuance of patent; Anglo-American etc. Co. v. Lombard, 132 Fed. 731, 68 C. C. A. 89, in action at law in federal court to enforce statutory liability of stockholder in Kansas corporation, defendant cannot set off debt from corporation to him; Peyton v. Desmond, 129 Fed. 10, 63 C. C. A. 651, state statute purporting to regulate effect of final receipts issued by United States Land Department cannot withhold from grantees of United States any of incidents of the transfer of government title; Tyee Consol. Min. Co. v. Langstedt, 1 Alaska, 444, ten year statute of limitations begins to run in favor of one in adverse possession of part of mining claim from time of location and not from date of patent; Adams v. Couch, 1 Okl. 29, 26 Pac. 1013, recovery in ejectment on duplicate receipt of register and receiver, not authorized by Neb. Code Civ. Proc., § 411.

13 Pet. 464-485, 10 L. 248, BURTON v. SMITH.

Syl. 2 (III, 856). Sale of reversion to satisfy decedent's debt.

See 112 Am. St. Rep. 1022, note.

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7, 10 L. 258, MEREDITH v. UNITED STATES.

857). Debt for unpaid duties.

n United States v. National Fibre Board Co., 133 holding jurisdiction of district court over action to due from importer, which, through accident, mistake not been paid.

857). Duties accrue on arrival of goods.

ı United States v. Ed. S. Hartwell L. Co., 142 Fed. erchandise was imported before tariff of 1897 went d entry tendered before importation complete was re- ot renewed until act became operative, it was gov- ion 33 of said act.

18, 10 L. 264, WILCOX v. JACKSON ex dem. Mc- L.

858). Judgment binding till reversed.

n United States v. Praeger, 149 Fed. 485, where a ubpoenaed to testify before court-martial and refused ause answers might tend to incriminate him, decision questions were proper is not conclusive on civil courts hether witness was guilty of contempt in refusing to

860). Land officer's decision conclusive.

d in De Laittre v. Board of Commissioners, 149 Fed. regon statutes prior to issuance of deed for school nd board may, on receiving information of fraud in r purchase, institute hearing.

861). President acts through departments.

ı United States v. Tully, 140 Fed. 901, lands occupied mits of lands reserved for Missoula Military Reserva- tive order, are not within such reservation; Behrends 1 Alaska, 524, acts of Secretary of the Navy in re- of public domain constitute valid reservation so that ineral within reservation will not sustain mining loca-

862). Legally appropriated lands severed.

ı Scott v. Carew, 196 U. S. 109, 112, 49 L. 405, 406, Ct. 193, right of pre-emption given by act of 1826 did lands which had been appropriated for military post st was abandoned; United States v. Oregon etc. Co., railroad land grant of 1866 did not embrace land of grant was subject to live homestead entry, though linquished prior to filing of map of definite location; ited States, 143 Fed. 748, grantees of public lands out-

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side of Fort Belknap reservation could not acquire, as against Indians, exclusive right to waters of Milk river, for purposes of irrigation; United States v. Tully, 140 Fed. 905, lands occupied but without limits of lands reserved for Missoula Military Reservation by executive order are not within such reservation; Northern Lumber Co. v. O'Brien, 139 Fed. 616, under Northern Pacific grant of 1864, lands withdrawn by land department in advance of permanent location of another road not embraced therein; Gibson v. Anderson, 131 Fed. 42, 65 C. C. A. 277, President, by proclamation, may reserve portion of unoccupied public lands for Indian reservation; Gavigan v. Crary, 2 Alaska, 380, where tract of public land is actually set apart by war department for military purposes, and government appropriations expended in fitting it for such use and military forces remain in possession thereof until its abandonment by formal notice, it was a military reservation; Crawford v. Burr, 2 Alaska, 35, where commander of military post gave party permission to erect stable on reservation, he initiated no right to ground by such possession; State v. Trustees of the Internal Improvement Fund, 47 Fla. 325, 35 So. 995, applying rule where lands were listed as swamp and overflowed lands; Florida Town Imp. Co. v. Bigalsky, 44 Fla. 776, 33 So. 451, applying rule to public lands on north end of Amelia Island reserved for military purposes; State v. Tully, 31 Mont. 382, 78 Pac. 766, determining jurisdiction of state over homicide committed on land set apart to military reservation; McMichael v. Murphy, 12 Okl. 160, 161, 70 Pac. 191, homestead entry valid on its face segregates it from the public domain and precludes it from subsequent entry until original entry is canceled. See 106 Am. St. Rep. 800, note.

Syl. 8 (III, 865). Patent alone passes perfect title.

Approved in McCune v. Essig, 199 U. S. 390, 50 L. 241, 26 Sup. Ct. 78, doctrine of relation cannot be invoked to confer any right in land under operation of state laws upon daughter of deceased homesteader as against widow to whom patent has issued.

Syl. 9 (III, 866). Statute conveying lands in present tense.

Approved in Smith v. Beloit, 122 Wis. 407, 100 N. W. 881, where entryman on public land, after having paid his money and obtained register's certificate, platted land into city lots, on recording of patent to him, deeds to grantees conveyed legal title.

Syl. 10 (III, 867). Federal laws govern passing of government title.

Approved in Peyton v. Desmond, 129 Fed. 10, 63 C. C. A. 651, state statute purporting to regulate effect of final receipts of United States land department cannot withhold from grantees of government any of incidents of transfer of government title; Moore v. Halliday, 43 Or. 253, 99 Am. St. Rep. 724, 72 Pac. 804, one who has

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tead filing on government land, and is in possession, obtained title, cannot have title quieted as against an interest therein.

II, 867). State regulation when title passes.

in Cunningham v. Krutz, 41 Wash. 197, 83 Pac. 112, nd homesteaded lands and resided thereon with wife, ssued to him, and wife left will giving undivided half er children, wife could not devise any part of same as roperty as patent vested entire estate in husband.

II, 867). Suit against government officer.

in Wadsworth v. Boysen, 148 Fed. 780, suit to enjoin from obstructing complainant in prospecting on reser- ot suit against government though defendant claims in official capacity.

06, 10 L. 274, BANK OF AUGUSTA v. EARLE.

I, 871). Corporation cannot migrate.

in Lee v. Atlantic etc. R. Co., 150 Fed. 800, where peti- oval by defendant corporation alleges that it was or- er laws of state other than that on which it is sued, that it is not a citizen of latter state is unnecessary; hrens, 150 Fed. 656, since under West Virginia laws ieties cannot be incorporated, a trust created by will of foreign religious corporation, involving devise of t Virginia, is void; Kirven v. Virginia etc. Co., 145 ilure of foreign corporation to comply with state stat- g conditions precedent to right of such corporations ss in state, does not render contracts wholly void, but s right to sue thereon until it complies; Western Union Pittsburg etc. Ry. Co., 137 Fed. 437, in federal equity cific performance of telegraph right of way contracts consolidated railroads, necessary parties being subject urisdiction, it is immaterial that portion of property utside of district; Old Wayne Mut. Life Assn. v. Mc- 4 Ind. 327, 73 N. E. 705, upholding Pennsylvania stat- g foreign insurance companies to file with insurance permitting service of process on commissioner or on ated by company; Ham v. Booth, 72 Kan. 431, 83 Pac. is not void for failing to give residence of assignee of sale where such assignee is foreign corporation and t it is a corporation organized and existing under laws l state; Williams v. Metropolitan St. Ry. Co., 68 Kan. 602, 64 L. R. A. 794, foreign corporation is "out of ithin meaning of Code, § 21, and therefore cannot avail statute of limitations; Pollock v. German Fire Ins. ch. 227, 93 N. W. 437, upholding statutes relating to

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foreign insurance companies providing that term "agent" shall include any acknowledged agent or other person who shall aid in transaction of company's business; Groel v. United Elec. Co., 69 N. J. Eq. 410, 60 Atl. 827, upholding service on designated agent of foreign corporation; Myatt v. Ponca City Land etc. Co., 14 Okl. 223, 224, 226, 78 Pac. 194, 195, 68 L. R. A. 810, where foreign corporation, acting in excess of its conferred authority, attempts to acquire property vested in individual, latter may deny corporate capacity as defense to right of recovery; Chapman v. Cash Register Co., 32 Tex. Civ. 77, 73 S. W. 970, under Rev. St., arts. 745, 746, requiring foreign corporation to file certified copy of articles of incorporation, such corporations must, on suing, allege compliance with statute; Booth v. Weigand, 28 Utah, 384, 79 Pac. 572, upholding constitutional and statutory provisions prescribing conditions for transaction of business by foreign corporations; National Council etc. American Mechanics v. State Council, 104 Va. 205, 51 S. E. 169, upholding act of Feb. 17, 1900, constituting certain persons a body corporate and giving corporation exclusive authority to charter subordinate chapters, thereby in effect annulling prior existing right of foreign corporation; dissenting opinion in Security etc. Ins. Co. v. Prewitt, 202 U. S. 265, 50 L. 1021, 26 Sup. Ct. 619, majority holding state may provide that if foreign insurance company shall remove to federal court case commenced in state court, license to do business in state shall be revoked; Kansas City etc. Ry. Co. v. Stevenson, 135 Fed. 554, arguendo.

Distinguished in Goodwin v. Clayton, 137 N. C. 235, 107 Am. St. Rep. 479, 49 S. E. 177, 67 L. R. A. 209, upholding right to proceed against New Jersey corporation by garnishment where services sued on performed in North Carolina and it had no property in former state.

Syl. 8 (III, 877). Comity—Enforcement of foreign laws.

Approved in Corbin v. Houlehan, 100 Me. 256, 61 Atl. 135, 70 L. R. A. 568, action for liquors sold in another state cannot be maintained where statute of this state prohibits such sales; Holshouser v. Copper Co., 138 N. C. 258, 50 S. E. 654, 70 L. R. A. 183, claim for state license fee imposed by New Jersey statute on corporations created by that state is not entitled to preference in insolvency proceedings against such corporations in another state; dissenting opinion in Warren v. Pim, 66 N. J. Eq. 417, 59 Atl. 797, majority holding voting trust in stock of fisheries company a New Jersey corporation, claimed by a British corporation, contrary to public policy and void.

Syl. 11 (III, 879). Suit by foreign corporation.

Approved in Evansville etc. Co. v. Henderson B. Co., 132 Fed. 404, federal equity court sitting in Kentucky cannot compel domestic corporation to permit Indiana railroad, which has not complied

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relating to foreign corporations, to connect with and use
r bridge to enable railroad to do business in Kentucky.

(III, 880). Imposition of terms on foreign corporations.

d in Miller v. Ahrens, 150 Fed. 656, since, under West
aws, religious societies cannot be incorporated, a trust
will for benefit of foreign religious corporation involving
land in West Virginia is void; Kirven v. Virginia etc. Co.,
292, failure of foreign corporation to comply with state
posing conditions precedent to right of such corporations
iness in state does not render contracts wholly void, but
ends right to sue therein until it complies; Prewitt v.
tc. Ins. Co., 119 Ky. 327, 83 S. W. 612, upholding Ky.
§ 631, providing that if any foreign insurance company
iout the consent of the other party to the suit, remove
federal court, insurance commissioner shall revoke its
tate v. Cumberland Tel. etc. Co., 114 Tenn. 200, 86 S. W.
re of foreign telephone company to file abstract of its
each county, where it has exchange as required by stat-
not work forfeiture of charter; Standard Oil Co. v. Com-
, 104 Va. 685, 52 S. E. 390, holding Va. Code 1904, p.
osing license fee on foreign corporations, requires fee of
is authorized to exercise powers of public service cor-
though it does not intend to exercise business of public
rporations; Presbyterian Ministers' Fund v. Thomas, 126
110 Am. St. Rep. 919, 105 N. W. 803, where foreign in-
as failed to comply with statutes imposing conditions
to right of companies to do business with residents, it
over on such contract though made in another state.

(III, 883). Franchises defined.

d in Chicago v. Rothschild, 212 Ill. 593, 72 N. E. 699, city
granting right to maintain elevated passageway connect-
with elevated railroad, and limiting right to fifty years,
r franchise nor freehold interest; Purnell v. McLane, 98
56 Atl. 831, upholding Baltimore ordinance authorizing
commission to rent conduit space only to companies hav-
rity to use streets.

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XIV PETERS.

14 Pet. 19-32, 10 L. 335, BANK OF THE METROPOLIS v. GUTTSCHLICK.

Syl. 2 (IV, 8). Corporation's contract through officers.

Approved in Sudworth v. Morton, 137 Mich. 578, 100 N. W. 770, where, in action to recover money obtained by false representations, declaration alleged representations were made to plaintiff, who paid money relying thereon, proof that representations made to plaintiff's agent and that she paid money on plaintiff's behalf, and that he subsequently ratified her act, constitute no variance.

Syl. 12 (IV, 10). Judgment on note. Limitations--Foreclosure.

Approved in Haggart v. Wilczinski, 143 Fed. 28, under Mississippi statutes fact that debt secured by mortgage was barred did not preclude mortgagee in possession under void sale from suing to compel mortgagor's heirs from electing to affirm or disaffirm sale, and for judicial foreclosure.

14 Pet. 33-42, 10 L. 341, KANE v. PAUL.

Syl. 3 (IV, 11). Suits by or against foreign executors.

Approved in Moore v. Petty, 135 Fed. 673, 68 C. C. A. 306, executor may sue in another state, without procuring new letters to recover from agents employed by him proceeds of sale of realty belonging to decedent's estate.

Syl. 6 (IV, 12). Executor's suit—Personal or representative capacity.

Approved in Leahy v. Haworth, 141 Fed. 852, arguendo.

14 Pet. 51-55, 10 L. 350, WEST v. BRASHEAR.

Syl. 2 (IV, 14). Construction of appellate mandate—Opinion.

Approved in Montana Min. Co. v. St. Louis etc. Co., 147 Fed. 904, where circuit court of appeals on error by defendant affirmed judgment of circuit court, but subsequently on cross-error by plaintiff reversed on different questions and ordered new trial, opinions in two cases are law of case on subsequent error from second judgment; Wollman v. Loewen, 108 Mo. App. 586, 84 S. W. 167, applying rule in action on promissory notes. See 98 Am. St. Rep. 905, note.

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66, 10 L. 354, COMMERCIAL ETC. BANK v. SLOCOMB.

IV, 17). Special appearance by corporation.

d in Greenleaf v. National Assn. Ry. Post Clerks, 130 where foreign insurance company after suit brought in took reasonable steps to have same removed, it could, val, appear specially for purpose of dismissing on ground jurisdiction of person; Hilton v. Consumers' Can Co., 0, 48 S. E. 901, execution of attachment bond by defend- achment is not such appearance as gives jurisdiction to onal judgment against defendant.

-76, 10 L. 357, SUYDAM v. BROADNAX.

IV, 19). Insolvency statute exempting from suit—Courts.

d in Metropolitan Rubber Co. v. Place, 147 Fed. 95, de- d in suit for dissolution of corporation barring all claims ted for allowance pursuant to previous order, does not t of nonresident creditor to sue on claim; Alice E. Min. nden, 136 Fed. 254, nonresident creditor may establish in federal courts against personal representatives of de- tor, though state laws limit right to establish such claims ings in probate court; Barber Asphalt etc. Co. v. Morris, 50, 67 L. R. A. 761, 66 C. C. A. 55, Duluth charter, § 80, for appeals from allowance or rejection of claims to urt, and prohibiting payment of claims pending appeal, estrict power of federal courts to enforce their judgments laims.

83, 10 L. 361, CARR v. DUVAL.

IV, 23). Contracts—Acceptance not according to offer.

d in Cella v. Brown, 144 Fed. 762, applying principle to s with stockholders of railroads for agreement for re- n; Kelley, Maus & Co. v. Sibley, 137 Fed. 588, 69 C. C. A. uing contract for carriage bolts as conditional acceptance o purchase; Henry v. Black, 213 Pa. 627, 63 Atl. 253, pecific performance where holder of option to purchase n terms varying from those offered.

IV, 23). Specific performance of uncertain contract.

d in Sharp v. West, 150 Fed. 461, refusing specific per- of contract for sale of land where there was three years' uing; Jones v. Byrne, 149 Fed. 461, refusing specific per- of contract to purchase lands where defendant, under etween parties, was both attorney and trustee for com- Couch v. McCoy, 138 Fed. 704, construing correspondence sing lands as not constituting option to purchase; Kane an, 131 Fed. 612, refusing specific performance of oral for exchange of cows for farm.

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14 Pet. 84-94, 10 L. 364, REMINGTON v. LINTHICUM.

Syl. 4 (IV, 24). Statute of frauds—Return on execution.

See 102 Am. St. Rep. 242, note.

14 Pet. 122-132, 10 L. 382, RUNYAN v. COSTER.

Syl. 3 (IV, 30). Exercise of corporate powers out of state.

Approved in Julian v. Central Trust Co., 193 U. S. 107, 48 L. 637, 24 Sup. Ct. 399, determination by state court that property covered by mortgage of all property and franchise of railroad remains liable after federal foreclosure for debts thereafter accruing against mortgagor because of purchaser's failure to organize domestic corporation is not binding on federal court.

Syl. 4 (IV, 32). Questioning corporate capacity to hold land.

Approved in Brigham v. Peter Bent. Brigham Hospital, 134 Fed. 527, 67 C. C. A. 393, where state has waived right to enforce limitation on amount of property which charitable corporation may hold, by creating particular corporation with enlarged capacity, power of corporation cannot be collaterally attacked; Wyatt v. Ponca City Land etc. Co., 14 Okl. 213, 78 Pac. 192, 68 L. R. A. 810, when foreign corporation seeks to acquire title to property vested in individual, such individual may, under Oklahoma statute, deny its corporate existence as to defense to right of recovery.

14 Pet. 147-155, 10 L. 393, WALDEN v. CRAIG.

(IV, 34.) Miscellaneous. Cited in Clapp v. Houg, 12 N. D. 606, 102 Am. St. Rep. 589, 98 N. W. 712, 65 L. R. A. 757, holding void Rev Codes, § 6325, subd. 2, providing for appointment of special administrators, as applied to property of living person.

14 Pet. 156-165, 10 L. 398, WALDEN v. BODLEY.

Syl. 2 (IV, 36). Amendment presenting new case.

Approved in Ratliff v. Sommers, 55 W. Va. 37, 46 S. E. 715, permitting amendment to answer to bill for specific performance.

14 Pet. 172-177, 10 L. 405, TAYLOR v. LONGWORTH.

Syl. 4 (IV, 40). Specific performance—Time as essence of contract.

Approved in Standiford v. Thompson, 135 Fed. 997, 68 C. C. A. 425, applying rule to option to purchase coal lands where first payment not made until several months after time specified; Early Times Distil. Co. v. Zeiger, 11 N. M. 234, 67 Pac. 737, under Laws 1889, c. 67, §§ 1, 2, relating to assignments for benefit of creditors, action by creditor to compel transfer to inure to benefit of all creditors must be filed within six months after transfer; McClure v. Leaycraft, 183 N. Y. 43, 75 N. E. 963, where object of covenant

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rection of certain kinds of buildings on land had been de-
erection, in immediate neighborhood of buildings cove-
ainst, erection of such buildings on such land will not be
Hunter v. Coe, 12 N. D. 512, 97 N. W. 871, one buying
th notice of outstanding contract of sale may in specific
ice be required to pay to first vendee, from unpaid pur-
ney, sufficient sum to reimburse latter for payments made
.

78-200, 10 L. 408, BREWER v. BLOUGHER.

(IV, 43). Strict construction of statutes.

ed in Mottley v. Louisville etc. R. Co., 150 Fed. 411, act
ess, June 29, 1906, §§ 2, 6, prohibiting interstate carriers
ing passes, did not invalidate contract made in 1871 for
of free passes to complainant for life in consideration of
f damages; State v. Eldredge, 27 Utah, 488, 76 Pac. 341,
g Const., art. 13, § 11, giving state board of equalization
perform "such other duties as may be prescribed by law."

201-209, 10 L. 419, SPRIGG v. BANK OF MOUNT
ASANT.

(IV, 47). Showing deed absolute is mortgage.

ed in Weiseham v. Hocker, 7 Okl. 255, 54 Pac. 465,
ed absolute on its face is given in security of debt, and an
t is executed by grantee for reconveyance on payment of
ired, and both instruments were executed and delivered
ime and as parts of one transaction, they are a legal mort-

10-281, 10 L. 423, RHODE ISLAND v. MASSACHUSETTS.

(IV, 48). Sufficiency of pleas in equity.

ed in Glucose Sugar etc. Co. v. Douglass & Co., 145 Fed.
uit for infringement of patent, plea which sets up single
f noninfringement is not good plea, and it will be stricken
dered to stand as answer in discretion of court.

(IV, 49). Equity—Merits on determined on plea.

ed in American Graphophone Co. v. Leeds etc. Co., 140
applying rule in suit for infringement of patent; Mutual
Co. v. Blair, 130 Fed. 973, where insured died after com-
t of suit to cancel policy for fraud, but before answer,
n action on policy was brought, plea in bar alleging in-
eath and pendency of such action at law does not present
that bill was not sustainable for want of equity; Barber
al Carbon Co., 129 Fed. 377, 64 C. C. A. 40, construing plea
for infringement of patent as plea of license only and
defense.

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14 Pet. 282-292, 10 L. 457, DE VALENGIN v. DUFFY.

Syl. 2 (IV, 50). Character of administrator's liability for property.

Approved in Newcomb v. Burbank, 146 Fed. 400, where executors receive property from estate of their testator, but owned by third party, owner may proceed against them individually or in representative capacity.

14 Pet. 301-317, 10 L. 465, UNITED STATES v. KNIGHT.

Syl. 3 (IV, 55). Federal execution same as state.

See 101 Am. St. Rep. 151, 182, note.

Distinguished in Carter v. New Orleans etc. R. Co., 143 Fed. 102, Mississippi statute providing that actions to recover forfeiture on penal statute shall be brought within one year does not govern action in federal court against carrier to recover damages for discrimination in violation of Comp. St. 1901, pp. 3155, 3159.

14 Pet. 318-321, 10 L. 473, FOWLER v. BRANTLY.

Syl. 1 (IV, 56). Note—Notice of character of negotiations.

Approved in In re Troy & Cohoes Shirt Co., 136 Fed. 427, where president and treasurer of corporation drew notes payable to corporation's order, which they indorsed in name of corporation and individually, and they were delivered, without consideration, to vice-president for benefit of firm, of which all three were members, and vice-president indorsed them individually and president indorsed them in name of firm, discounter of such notes not charged with notice that they were accommodation notes.

14 Pet. 322-333, 10 L. 476, GAMES v. STILES.

Syl. 5 (IV, 59). Recitals in deeds—Proof of delivery.

Approved in Wilson v. Braden, 56 W. Va. 375, 107 Am. St. Rep. 929, 49 S. E. 410, recitals of heirship and widowhood in deeds upward of thirty years old under which possession continuously held, are presumptive evidence of truth of same, and admissible against strangers to title claiming adversely.

Syl. 6 (IV, 59). Following state construction of tax statute.

Approved in Columbia Ave. Sav. Fund etc. Co. v. Dawson, 130 Fed. 175, under Georgia constitution, city cannot exempt water company from payment of ad valorem tax on its property for municipal purposes, either directly or by commuting such taxes in consideration of certain service to be supplied by company.

14 Pet. 334-352, 10 L. 481, UNITED STATES v. WIGGINS.

Syl. 5 (IV, 61). Recognition and confirmation of Spanish grants.

Approved in Territory v. Delinquent Taxpayers, 12 N. M. 65, 73 Pac. 622, lands embraced in perfect Mexican grant are taxable

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ant submitted to court of private land claims for confirma-
patent not yet issued.

48-463, 10 L. 535, PHILADELPHIA & TRENTON R. R.
v. STIMPSON.

(IV, 67). Patents—Officers presumed to do duty.

ed in Cleveland Foundry Co. v. Kauffman, 135 Fed. 361,
A. 658, holding Jeavons' patent No. 702,560, for oil burner,
feature of which is needle valve controlling oil supply,
as to claims 1-6.

(IV, 69). Witnesses—Scope of cross-examination.

ed in Ayers v. Wabash R. R. Co., 190 Mo. 235, 88 S. W.
ying rule in action for injuries caused by being struck
otive; Stanley v. United States, 1 Okl. 350, 33 Pac. 1030,
idence of witness in chief is immaterial, perjury cannot
on his testimony given on cross-examination, as to mat-
ting his credibility only.

uished in dissenting opinion in Resurrection G. Min. Co.
ne G. Min. Co., 129 Fed. 681, 64 C. C. A. 180, majority
where witness for plaintiff has disclosed, on direct exam-
part of a transaction, fact that entire transaction consti-
rmative defense is no bar to its disclosure by cross-ex-
n.

(IV, 72). Declaration of inventor prior to patent.

ed in Bullock Elec. Mfg. Co. v. Crocker-Wheeler Co.,
107, declarations of patentee relating to his invention,
ied by descriptions thereof, and made before application
t filed, are admissible to carry date of invention back to
n they were made.

64-477, 10 L. 543, UNITED STATES v. MORRIS.

(IV, 73). Penal statutes strictly construed.

ed in Northern Securities Co. v. United States, 193 U. S.
. 709, 24 Sup. Ct. 436, under anti-trust act of 1890, federal
y enjoin corporation organized in pursuance of combina-
stockholders of two competing interstate roads to acquire
g interest in capital stock of such companies from acquir-
ner stock or from voting such stock as it holds; United
One Black Horse, 129 Fed. 170, vehicle owned and let by
n and used wholly within United States in transporting
legally brought across Canadian border was subject to
though liveryman had no knowledge of purpose for which
ed; Dooley v. Jackson, 104 Mo. App. 32, 78 S. W. 334;
1899, §§ 3430, 3431, relating to betting on elections, do
y to primary elections.

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14 Pet. 497-523, 10 L. 559, DECATUR v. PAULDING.

Syl. 1 (IV, 78). Discretionary action not controlled by mandamus.

Approved in Bates etc. Co. v. Payne, 194 U. S. 109, 48 L. 895, 24 Sup. Ct. 595, refusing to interfere with action of postmaster general in refusing to admit as second-class matter monthly musical publication, each issue of which is complete in itself, treating of works of single musician; United States v. Certain Lands in Narragansett, R. I., 145 Fed. 655, under 33 Stat. 1119, for improving Point Judith harbor of refuge, Secretary of War has discretionary power as to amount of land necessary to be condemned; Dever v. Humphrey, 68 Kan. 764, 75 Pac. 1039, refusing to interfere with appointment to office on behalf of one claiming preference given by Laws 1901, p. 359, to Civil War veterans; Wilbourne v. Baldwin, 5 Okl. 274, 47 Pac. 1048, determination of officers of Interior Department as to whether lands applied for are open to settlement or whether they are Indian lands will not be interfered with by courts by injunction in behalf of homesteader prior to time question has passed beyond control of department.

14 Pet. 540-598, 10 L. 579, HOLMES v. JENNISON.

Syl. 1 (IV, 85). Judiciary act—Habeas corpus is suit.

Approved in State v. Chittenden, 127 Wis. 494, 107 N. W. 508, certiorari is an action under Rev. St. 1898, § 2595.

Syl. 4 (IV, 87). Police power—Exclusion of persons from state.

Approved in State v. Stuart, 194 Mo. 360, 92 S. W. 883, upholding Rev. St. 1899, § 2169, making it bigamy for anyone having living spouse to marry again and cohabit with second spouse in this state. See 112 Am. St. Rep. 107, note.

Syl. 5 (IV, 87). International extradition.

See 112 Am. St. Rep. 110, note.

XV PETERS.

15 Pet. 1-8, 10 L. 639, VAUGHAN v. NORTHUP.

Syl. 1 (IV, 91). Suit against foreign administrator.

Approved in Courtney v. Pradt, 135 Fed. 820, foreign executor cannot be sued in state other than that wherein he was appointed.

Distinguished in Moore v. Petty, 135 Fed. 673, 68 C. C. A. 306, an executor may sue in courts of state other than that of appointment to recover from agents employed by him the proceeds of sale of realty belonging to decedent's estate.

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IV, 93). Administrator accountable to court of own state.

ed in Schartz v. Gerhardt, 44 Or. 428, 75 Pac. 699, trustee by foreign court cannot be required to account for trust y court of another jurisdiction.

-51, 10 L. 653, HOUSEMAN v. SCHOONER NORTH CARO-.

(IV, 96). Admiralty—Amendment on appeal adding new

ed in The Cerea, 149 Fed. 926, substitution of new owner nt of libeled vessel, which has been released on stipulation, nging in of new party, and may be allowed without notice ety on the stipulation.

3-114, 10 L. 673, BRUSH v. WARE.

IV, 98). Bona fide purchaser—Notice.

ed in Pierce v. Vansell, 35 Ind. App. 536, 74 N. E. 558, where tor's deed of land sold to pay debts described kind of umber of volume and page wherein order of judgment sale was entered, and examination of deed would disclose art only, subsequent purchaser under misdescription is not purchaser.

1-166, 10 L. 689, UNITED STATES v. DICKSON.

IV, 103). Statutes—Contemporaneous construction.

ed in Pitts v. Logan County, 3 Okl. 740, 41 Pac. 591, territrict court clerks must, under federal laws, account to Sec- Treasury for all fees, and act of territorial assembly at- to regulate same is void.

(IV, 103). Statutes—Provisos strictly construed.

ed in Long v. Pennsylvania R. Co., 149 Fed. 600, under P. 1906, p. 525, where an action is brought after passage of for tort committed against married woman, her husband roper party thereto; United States v. Schlierholz, 137 Fed. al agent of Land Department appointed under 30 Stat. 32 ted States officer within Rev. St., § 5481, punishing extortion; New York Life Ins. Co., 132 Fed. 929, proviso of Bankr. Act, 0a, giving bankrupt right to retain life policy having sur- lue, does not prevent vesting in trustee of title to policy s no surrender value, but which is payable to personal tives and has in fact a cash value; Burke v. Snively, 208 0 N. E. 330, under Const. 1870, § 3, relating to Illinois and canal, legislature could not appropriate moneys from n aid of its operation; Ex parte Helton, 117 Mo. App. 618, 914, under Laws 1905, pp. 168, 169, resident of state need n hunter's license as condition precedent to right to hunt of his residence.

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15 Pet. 187-210, 10 L. 706, UNITED STATES v. BOYD.

Syl. 1 (IV, 106). Surety's liability not impliedly extended.

Approved in Gray v. Noonan, 5 Ariz. 173, 50 Pac. 118, judgment against certain person for conversion of property by seizure and sale of it is inadmissible in subsequent action by same plaintiff against same person as sheriff and sureties on bond, for conversion of same property by seizure and sale of it by sheriff under execution; Lake Co. v. Neilon, 44 Or. 17, 74 Pac. 213, bond of tax collector that sureties will make good all moneys that may or shall come into his hands as tax collector that he does not account for, does not include prior defalcations.

Distinguished in Greer v. McNeal, 11 Okl. 541, 69 Pac. 898, sureties on administrator's bond are liable for whatever is chargeable to administrator in his official capacity.

Syl. 4 (IV, 109). Amendments where case remanded.

Approved in Graham v. Oregon etc. Nav. Co., 134 Fed. 693, where exceptions to libel for want of jurisdiction are sustained, leave to amend may be granted.

15 Pet. 290-318, 10 L. 742, UNITED STATES v. LINN.

Syl. 2 (IV, 113). Official duties attach irrespective of bond.

Approved in Houston v. Estes, 35 Tex. Civ. 104, 79 S. W. 851, though manner of qualification of policeman is not in strict conformity with charter, he becomes officer de jure on taking official oath and giving bond which was accepted without objection.

Syl. 6 (IV, 113). Official bond not in statutory form.

Approved in Pima Co. v. Snyder, 5 Ariz. 50, 44 Pac. 298, where name of principal in official bond of county treasurer is recited in body of bond, and he subscribes oath of office indorsed on bond and enters upon duties of his office, his failure to sign bond does not exonerate sureties.

15 Pet. 336-376, 10 L. 759, GRATIOT v. UNITED STATES.

(IV, 116.) Miscellaneous. Cited in United States v. Schlierholz, 133 Fed. 335, special agent of general land office is not officer of United States within Rev. St., § 5481, relating to extortion.

15 Pet. 377-406, 10 L. 774, UNITED STATES v. BANK OF THE METROPOLIS.

Syl. 1 (IV, 118). Accepting of draft by United States.

Approved in Walker v. United States, 139 Fed. 413, 414, where marshal rendered accounts against United States covering services of deputies, which have been audited and paid, government, after long lapse of time and after expiration of term of office, cannot recover such sums; Lynch v. United States, 13 Okl. 145, 73 Pac. 1096,

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United States to annul patent for fraud must contain
averments necessary to constitute bill in equity under
actice. See 101 Am. St. Rep. 151, 169, note.

V, 119). Want of consideration between drawer and ac-

in Morrison & Co. v. Farmers' etc. Bank, 9 Okl. 700, 60
pplying principle to foreign bill of exchange.

-422, 10 L. 785, UNITED STATES v. FITZGERALD.

V, 120). Federal officer may pre-empt.

hed in Scott v. Carew, 196 U. S. 112, 49 L. 406, 25 Sup.
ht of pre-emption given by 4 Stat. 154, c. 28, did not ex-
ds which had been appropriated by United States for
st until such post was abandoned.

V, 121). Land appropriation authorized only by Congress.
in United States v. North West Trading Co., 1 Alaska,
opriation of water fund for purposes of wharfage to
es can only be made by act of Congress.

-448, 10 L. 791, MINIS v. UNITED STATES.

V, 121). Statutes—Office of proviso.

in Jones v. Hoover, 144 Fed. 227, under 23 Stat. 340, and
, relating to Umatilla Indian reservation, purchaser of one
l sixty acres of untimbered land under first act could not
second, though he was settler on tract he sought to buy;
Denson, 74 Ark. 306, 86 S. W. 662, under Kirby's Digest,
is not necessary that there shall be seven years' payment
efore such payment will begin to be equivalent to pos-

n Interstate Commerce Commission v. Baird, 194, U. S. 37,
24 Sup. Ct. 563, under 32 Stat. 849, c. 708, § 3, direct ap-
supreme court from final decree of circuit court in pro-
compel production of papers and giving of testimony
state commerce commission.

-517, 10 L. 800, GROVES v. SLAUGHTER.

) Miscellaneous. Cited in Globe Elevator Co. v. Andrew,
34, upholding Wisconsin Laws 1905, as amended, creating
arehouse commission and providing for inspection and grad-
n.

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XVI PETERS.

16 Pet. 1-24, 10 L. 865, SWIFT v. TYSON.

Syl. 2 (IV, 129). Presumption of bona fide holder.

Approved in First Nat. Bank v. Moore, 148 Fed. 958, following rule.

Syl. 4 (IV, 130). Local law as rule of decision.

Approved in Pabst Brewing Co. v. Thorley, 145 Fed. 120, determining whether, in action for breach of covenant of quiet enjoyment in lease, defendant was responsible for eviction by act of holder of paramount title; Cudahy Packing Co. v. State Nat. Bank, 134 Fed. 540, 67 C. C. A. 662, provision for payment of attorney's fees in case note not paid at maturity does not destroy negotiability; Three States Lumber Co. v. Blanks, 133 Fed. 482, 69 L. R. A. 203, 66 C. C. A. 353, decisions of state courts as to what will excuse plaintiff for nonreturn of property replevied, on his failure in the action, are not binding on federal court.

Syl. 5 (IV, 133). Prior equities—Pre-existing debt as consideration.

Approved in First Nat. Bank v. Moore, 148 Fed. 957, purchaser of note for value before maturity is not deprived of character of purchaser in good faith by proof that he took note with knowledge of such circumstances as ought to put ordinarily prudent man on inquiry; Gamble v. Rural Ind. School Dist., 132 Fed. 522, one who obtained bond issued by school district from prior holder in payment for legal services rendered and to be rendered is bona fide holder for value, where bond not due and contained nothing on face to show invalidity; Tollman v. Quincy, 129 Fed. 975, where defendant's note was transferred to plaintiff before maturity in settlement of pending suit, plaintiff's counsel being told that it had been given by maker to payee in settlement of account between them, plaintiff was bona fide holder; Birket v. Elward, 68 Kan. 299, 74 Pac. 1101, 64 L. R. A. 568, indorser of negotiable note taken as collateral security for pre-existing debt, there being no new consideration, is holder for value and in due course, and is protected against claim of payment made to original payee; Merchants' etc. Bank v. Ohio Valley etc. Co., 57 W. Va. 630, 50 S. E. 882, 70 L. R. A. 312, applying rule where bank discounted note of corporation signed by its president and treasurer while in hands of agent.

Distinguished in Empire State etc. Co. v. Trustees of Fisher & Co., 67 N. J. Eq. 605, 60 Atl. 941, mortgage given merely to secure antecedent debts is not given "for value" within clause "e" in bank-

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t, § 70, or for "valuable consideration" within New Jersey
n act, § 64.

5-64, 10 L. 873, WATKINS v. HOLMAN.

IV, 138). Vendee not tenant of vendor.

ed in Scott v. Mineral Development Co., 130 Fed. 502, 64
559, where one holding two adjoining tracts under separate
ook possession of one and made improvements thereon and
sold all land as one tract to defendants, who leased it, sub-
onveyance to plaintiff by adverse claimant was void as to
ct.

IV, 141). Compelling conveyance of land in other state.

ed in Dickson v. Loehr, 126 Wis. 645, 106 N. W. 794, 4 L.
. S.) 986, where purchaser in land contract conveyed land
r state as security for price, vendor in action on contract
judgment requiring vendee to pay amount secured or to
nd.

(IV, 143). Ancestor's land descends to heirs.

Am. St. Rep. 1021, note.

1-88, 10 L. 891, COCKE v. HALSEY.

(IV, 145). Collateral attack on de facto officer.

ed in Monahan v. Lynch, 2 Alaska, 134, upholding appoint-
poundmaster by town council, members of which were
ot to have been legally elected; Powers v. State, 83 Miss.
. 8, where on disqualification of regular circuit judge, special
s, by governor, commissioned to try criminal case, and he
l duties of office, his acts are valid, though he failed to
.

7-105, 10 L. 900, GORDON v. LONGEST.

IV, 147). Declaration determines amount in dispute.

ed in Barber v. Boston etc. Co., 145 Fed. 52, action on case
damages for negligence is not removable though actual
alleged to be greater.

(IV, 148). Jurisdiction—Recovery of less than claim.

ed in McCarthy v. American Thread Co., 143 Fed. 680, cir-
cannot penalize plaintiff for colorably invoking jurisdic-
s such matter is shown at trial or appears from declaration;
ner v. Regan, 32 Mont. 119, 79 Pac. 698, arguendo.

IV, 149). Wrongful refusal of removal of cause.

ed in Mutual Life Ins. Co. v. Langley, 145 Fed. 421, where
moval petition and bond are filed in time in state court,
fied copy of record filed in federal court, latter court ac-
isdiction without state court order transferring cause.

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16 Pet. 182-195, 10 L. 930, HOBSON v. McARTHUR.

Syl. 5 (IV, 159). Relief under general prayer.

Approved in Lockhart v. Leeds, 195 U. S. 437, 49 L. 269, 25 Sup. Ct. 76, bill is sufficient to entitle complainant to treat legal holders of mine as trustees ex maleficio, and to recover from them materials taken from mine, where it avers title acquired under relocation made pursuant to fraudulent conspiracy with complainant's partner.

16 Pet. 196-202, 10 L. 935, UNITED STATES v. HANSON.

Syl. 4 (IV, 160). Force of surveyor general's certificates.

Approved in United States v. Montana Lumber etc. Co., 196 U. S. 578, 49 L. 605, 25 Sup. Ct. 367, private survey is inadmissible in evidence, in action by United States, to recover value of timber cut from unsurveyed lands, to show that land, when surveyed, will be within railroad grant.

16 Pet. 291-302, 10 L. 968, UNITED STATES v. ELIASON.

Syl. 3 (IV, 169). Executive may make army rules.

Approved in United States v. Hardison, 135 Fed. 422, oath taken by distiller's surety with reference to his qualifications, before deputy collector, was an oath taken in case in which law of United States authorizes oath to be administered, within Rev. St., § 5392, defining perjury; Peters v. United States, 2 Okl. 123, 33 Pac. 1033, false swearing before register of land office in contest is punishable as perjury under Rev. St., § 5392.

16 Pet. 303-314, 10 L. 973, AMIS v. SMITH.

Syl. 3 (IV, 170). Defects in final process not assignable error.

Approved in King v. Davis, 137 Fed. 233, where petitioner applying to vacate judgment in ejectment, not party to action, is in possession, and would be illegally disturbed by execution of writ of possession, she is entitled to order directing marshal, in executing writ, to leave her possession undisturbed.

Syl. 4 (IV, 170). Interest on judgment.

Approved in McNeill v. Durham etc. R. Co., 138 N. C. 4, 50 S. E. 459, under Code, § 530, judgment bears interest though it contains no provision to that effect.

16 Pet. 315, 316, 10 L. 977, GIBSON v. CHEW.

Syl. 1 (IV, 172). Federal courts—Suits by assignee.

Approved in Utah-Nevada Co. v. De Lemar, 133 Fed. 122, 66 C. C. A. 179, federal court has no jurisdiction over suit by assignee of oral contract to recover money due thereon unless record shows it could have been maintained in such court by assignor.

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-335, 10 L. 982, FRESH v. GILSON.

IV, 175). Overcoming of presumptions.

l in Wabash R. Co. v. DeTar, 141 Fed. 934, applying rule for damages for death caused by collision with train at

6-341, 10 L. 985, PROUTY v. RUGGLES.

IV, 176). Patent for combination—Infringement.

d in Central Foundry Co. v. Coughlin, 141 Fed. 94, holding atent No. 553,055, for foundry ladle, not infringed; Brookmer Glass Works, 132 Fed. 313, holding Kribs patent No. r improvements in presses for making screw insulators, ged by Duffield patent No. 723,589; Bullock etc. Co. v. use etc. Co., 129 Fed. 109, 63 C. C. A. 607, where defendant from making, using or selling apparatus embodying inpecified, two of which covered mechanical elements, one each being motor covered by method of third patent, he olate injunction by making and selling motor.

2-366, 10 L. 987, WOOD v. UNITED STATES.

IV, 179). Similar acts to prove fraudulent intent.

d in Exchange Bank v. Moss, 149 Fed. 342, where petition, o recover money by means of conspiracy between defendant others, alleged conspiracy extended over long period both after transaction in suit, evidence of other acts of cashier to similar transactions is admissible; Dillard v. United Fed. 308, admitting evidence of other forged Chinese cert mentioned in indictment but shown to be in defendant's g; Olson v. United States, 133 Fed. 854, 67 C. C. A. 21, ctment charging conspiracy to defraud government of govnds by causing illegal entry of a tract by person named of defendants, evidence tending to show defendants inrs to enter different tracts at same time under similar ces is admissible; Bryan v. United States, 133 Fed. 500, . 369, admitting evidence of finding molds for making 25- in chest used jointly by defendant and another, in prose- uttering counterfeit 5-cent pieces; United States v. Breese, 924, admitting evidence of other similar transactions to vledge and intent of accused in prosecution for embezzlenational bank officer; Wright v. Stewart, 130 Fed. 918, in n for conspiracy to swindle by means of fake footrace, evinterior and subsequent acts and declarations of conspirators ible; Dodge v. Knapp, 112 Mo. App. 525, 87 S. W. 51, garnishment proceedings, garnishee's denial of indebtedn issue, and plaintiff claimed garnishee held money of debtor l creditors, former judgment in suit by plaintiff against determining that transfers were fraudulent is admissible.

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Syl. 9 (IV, 181). States—Repeals by implication.

Approved in City of Wichita v. Old Colony Trust Co., 132 Fed. 648, 66 C. C. A. 19, holding Kansas Gen. St. 1868, c. 23, art. 8, § 74, giving telegraph companies right to put poles in roads and streets, by act of 1881, providing for incorporation of cities of first class; Tootle v. Kent, 12 Okl. 699, 73 Pac. 318, Code Civ. Proc., § 56, relating to place of trial, is not abrogated by 28 U. S. Stat. 21, c. 5, § 3, authorizing supreme court to designate judge to try case when judge of district has been of counsel in case.

16 Pet. 367-434, 10 L. 997, MARTIN v. WADDELL.

Syl. 6 (IV, 185). Title to lands under navigable waters.

Approved in Commonwealth v. Boston Terminal Co., 185 Mass. 283, 70 N. E. 126, under Acts 1896, p. 520, c. 516, creating Boston Terminal Company, company could not avoid payment of lands of state below tide water, condemned by it and embraced within street extensions; Crawford Co. v. Hathaway, 67 Neb. 351, 108 Am. St. Rep. 668, 93 N. W. 789, discussing riparian rights; Taylor v. Commonwealth, 102 Va. 765, 102 Am. St. Rep. 865, 47 S. E. 878, under Code 1887, § 1338, title to bed of navigable river between low-water mark and line of navigation is in state and not in riparian owner.

(IV, 184.) Miscellaneous. Cited in City of Providence v. Comstock, 27 R. I. 556, 65 Atl. 314, where municipal corporation owns land in fee and has been ousted from possession, ejectment is proper to establish title and recover possession, though land is covered by tide.

16 Pet. 435-450, 10 L. 1022, DOBBINS v. COMMISSIONERS OF ERIE COUNTY.

Syl. 10 (IV, 192). State tax on federal officer.

Approved in South Carolina v. United States, 199 U. S. 452, 466, 50 L. 266, 272, 26 Sup. Ct. 110, United States, under internal revenue laws, may exact liquor license from dispensing agents of state which has taken charge of liquor business; Mosely v. State, 115 Tenn. 57, 59, 86 S. W. 716, interest on United States bonds is not taxable by state on being paid into hands of bondholder.

16 Pet. 495-512, 10 L. 1044, CARPENTER v. PROVIDENCE-WASHINGTON INS. CO.

Syl. 3 (IV, 197). Payment of mortgagee's insurance—Assignment of debt.

Approved in Baker v. Monumental Sav. etc. Assn. 58 W. Va. 413, 112 Am. St. Rep. 1000, 52 S. E. 405, 3 L. R. A. (N. S.) 79, where owner of realty, subject to trust deed, sells same, reserving vendor's deed, and trust creditor insures in owner's name without knowledge of conveyance, and on fire occurring insurer pays whole trust debt, it is entitled to assignment thereof; Dunbrack v. Neall, 55 W. Va. 575, 47 S. E. 307, where creditor secured by trust deed procured in-

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trust property for own benefit, trust debter cannot require account to him for insurance moneys.

IV, 201). Misrepresentation makes policy voidable only.

l in Mutual etc. Life Assn. v. Austin, 142 Fed. 401, where ided that it should be incontestable after three years and t should not be in force until delivered to insured while lth, it was valid where it was delivered and held for over though policy not delivered when insured in good health.

IV, 203). Construction—Notice of other insurance.

l in Atlas Red. Co. v. New-Zealand Ins. Co., 138 Fed. 499, g under stipulation in policy that it was void if property without consent of insurer, oral evidence is admissible to ledge at time of indorsement by agents of payment of loss ees.

shed in dissenting opinion in Atlas Red. Co. v. New Zealand 8 Fed. 510, majority holding, under stipulation in policy, void if property encumbered without consent of insurer, e is admissible to show knowledge at time of indorsement of payment of loss to mortgagees.

IV, 204). Parol notice of other insurance insufficient.

shed in Medley v. German etc. Ins. Co., 55 W. Va. 350, 5, holding insurer liable where no written application made is given correct information as to title but inserts as facts different from those given.

-527, 10 L. 1055, MILLS v. BROWN.

V, 207). Consent gives no jurisdiction.

l in Henrie v. Henderson, 145 Fed. 319, denying jurisdic- kruptcy court of proceeding to restrain trustee from mak- purchaser at bankruptcy sale, and to compel execution portion of property to petitioner to compel specific per- f alleged contract relating to sale of land between petitioner ser; Clark v. Doerr, 143 Fed. 961, time within which writ st be sued out under 26 Stat. 829, § 11, cannot be extended nt.

-538, 10 L. 1056, MAURAN v. BULLUS.

V, 207). Construction of contracts—Intent.

l in Ward v. Foley, 141 Fed. 365, construing contract to vey all first party's interest in three hundred and twenty nd at rate of $14 per acre as providing for sale of an the land at rate of $14 for each acre in entire tract. See . Rep. 520, note.

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Syl. 2 (IV, 207). Surety contracts strictly construed.

Approved in Swift v. Jones, 135 Fed. 438, where contract employing defendant's son as plaintiff's broker, which was signed by defendant as guarantor, required son to give bond, and plaintiff sent son blank application for bond, which latter signed and returned to plaintiff, but latter failed to get bond until after son's defalcation, defendant not liable. See 98 Am. St. Rep. 844, note.

16 Pet. 539-674, 10 L. 1060, PRIGG v. COMMONWEALTH OF PENNSYLVANIA.

Syl. 7 (IV, 209). Construction of constitutional provisions.

Approved in Ex parte Anderson, 46 Tex. Cr. 380, 81 S. W. 976, city court has no jurisdiction to try accused for violation of state penal statute.

Syl. 19 (IV, 211). Government must perform constitutional duties.

Approved in Ex parte Riggins, 134 Fed. 415, 422, upholding indictment for conspiracy to lynch negro citizen.

Syl. 23 (IV, 212). Federal law supersedes state.

Approved in Davis v. Cleveland etc. Ry. Co., 146 Fed. 409, cars owned by railroad and delivered by it loaded to other companies to be used in transportation to other states, are, until returned, instrumentalities of interstate commerce, and not subject to taxation in state where carried by other companies.

Syl. 25 (IV, 213). Means to accomplish required end presumed.

Approved in Ex parte Riggins, 134 Fed. 410, upholding indictment for conspiracy to lynch negro citizen.

Syl. 26 (IV, 213). Contemporaneous construction of statutes.

Approved in Ex parte Anderson, 46 Tex. Cr. 399, 81 S. W. 987, city court has no jurisdiction to try accused for violation of state penal statute.

Syl. 28 (IV, 215). Enforcement of federal law by state officers.

Approved in Dallemagne v. Moisan, 197 U. S. 174, 49 L. 711, 25 Sup. Ct. 422, state police officer may make arrest on requisition of foreign consul charging seaman on vessel of consul's nation with insubordination, conformably with treaty.

Syl. 32 (IV, 215). Limits of state police power.

Approved in United States v. Moore, 129 Fed. 633, denying federal jurisdiction to punish conspiracy to intimidate citizen of United States to prevent him from establishing miners' union in a state, in furtherance of which defendants assaulted such citizen.

Distinguished in dissenting opinion in Allen v. Reed, 10 Okl. 157, 63 Pac. 877, majority holding void Stat. 1893, c. 23, relating to changing of county seats in territory as inconsistent with act of Congress 1893, §§ 10, 14, providing for opening of Cherokee Outlet to settlement.

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36, 11 L. 35, SMITH v. COUDRY.

IV, 219). Collisions—Law governing liability.

l in Slater v. Mexican National R. R. Co., 194 U. S. 903, 24 Sup. Ct. 581, federal court is without jurisdiction -law action founded on liability for death by wrongful l by Mexican laws; Dennis v. Atlantic Coast Line R. R. C. 258, 106 Am. St. Rep. 746, 49 S. E. 870, provision Code, § 1498, that action for wrongful death barred in applies to action under North Carolina statute in this

IV, 220). Collision—Measure of damages—Profits.

l in Choctaw etc. R. R. Co. v. Jacobs, 15 Okl. 500, 82 efusing to allow loss of commissions as damages for loss r's samples shipped.

shed in Tootle v. Kent, 12 Okl. 691, 73 Pac. 315, allow- profits as element of damages to merchant by wrongful ous act of another in closing his store; Chisholm etc. . U. S. Canopy Co., 111 Tenn. 210, 77 S. W. 1064, allow- rofits for breach of profits on patented brackets which delivered as per contract.

55, 11 L. ed. 38, MERCER v. SELDEN.

IV, 223). Curtesy in wife's property.

Am. St. Rep. 580, 582, note.

95, 11 L. 58, STROUT v. FOSTER.

IV, 224). Collision—Apportionment of loss.

l in The City of Birmingham, 138 Fed. 560, applying steamer passing up river on clear night struck dredge ear center of narrow channel.

1-118, 11 L. 64, UNITED STATES v. LINN.

IV, 226). Torts—Nolle prosequi as to one defendant.

l in Texas & P. Ry. Co. v. Sheftall, 133 Fed. 724, 66 552, dismissal of suit for personal injuries as to one of tort-feasors on ground that it was not necessary party lischarge claim against other defendant.

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1 How. 118-134, 11 L. 69, MORRIS v. NIXON.

Syl. 2 (IV, 228). Mortgages—Deed absolute—Burden of proof.

Approved in Liskey v. Snyder, 56 W. Va. 623, 49 S. E. 520, where mortgagee obtained release of equity of redemption from mortgagor, burden is on him to show good faith and that he paid what property was worth.

1 How. 134-152, 11 L. 75, BANK OF UNITED STATES v. BEVERLY.

Syl. 1 (IV, 229). Res adjudicata.

Approved in Georgia R. & Banking Co. v. Wright, 132 Fed. 916, decision of Georgia supreme court in suit between state and corporation that charter created contract limiting tax rate, concludes that state in subsequent suit involving taxes for different year.

1 How. 153-160, 11 L. 83, LLOYD v. HOUGH.

Syl. 1 (IV, 231). Use and occupation where possession adverse.

Approved in Chicago Term. R. R. Co. v. Winslow, 216 Ill. 171, 74 N. E. 817, where defendant was in possession as successor under contract with plaintiff's grantor after she had parted with title, action of assumpsit by plaintiff for use and occupation under license which was dismissed is not bar to ejectment.

1 How. 161-169, 11 L. 86, McKNIGHT v. TAYLOR.

Syl. 1 (IV, 231). Laches as bar to equitable relief.

Approved in Patterson v. Hewitt, 11 N. M. 18, 66 Pac. 556, 55 L. R. A. 658, refusing to enforce rights accruing under verbal agreement as to location of mining claims after lapse of eight years.

1 How. 169-188, 11 L. 89, BELL v. BRUEN.

Syl. 1 (IV, 233). Lex loci governs letter of credit.

Approved in Nashua Sav. Bank v. Sayles, 184 Mass. 522, 100 Am. St. Rep. 573, 69 N. E. 310, arguendo.

Syl. 6 (IV, 235). Construction of letters of credit.

Approved in Swift v. Jones, 135 Fed. 438, where contract employing defendant's son as plaintiff's broker, signed by defendant as guarantor, required son to give bond with company to be selected by plaintiff, and latter sent son application for bond, which son signed but plaintiff failed to get bond until after defalcation, defendant not liable as guarantor.

1 How. 189-197, 11 L. 97, BOWMAN v. WATHEN.

Syl. 1 (IV, 236). Laches not dependable on limitation statute.

Approved in Griffin v. Caldwell, 72 Ark. 456, 81 S. W. 613, holding bill by heirs to vacate sale of lands of decedent barred after

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irty-two years, where purchaser's interest had been sold gage foreclosure and land conveyed to others.

2-211, 11 L. 102, McCLURG v. KINGSLAND.

IV, 238). Public use prior to patent.

shed in Bowers v. Lake Superior etc. Co., 149 Fed. 988, rchaser of patented dredge from one holding under li- h was not at first assignable to be liable for royalties Pressed Steel Car Co. v. Hansen, 137 Fed. 409, 410, 412, (N. S.) 1172, employer not vested with property right n of employee and to patent therefor, but only to ir- icense to use invention.

V, 240). Prior use avoiding patent.

l in Bradley v. Eccles, 138 Fed. 914, where different permitted to use device publicly as nonpatented article than two years before application for patent therefor, r public use.

-234, 11 L. 108, JEWELL v. JEWELL.

V, 242). Declarations of decedent as to pedigree.

l in Imboden v. St. Louis etc. Trust Co., 111 Mo. App. W. 267, on issue of common-law marriage, evidence of band's declarations, made not in presence of wife, that gle was admissible, but evidence that he conducted him- l other women as single man was inadmissible.

V, 242). Newspaper articles as evidence of marriage.

l in Topper v. Perry, 197 Mo. 543, 95 S. W. 206, on common-law marriage, declarations of alleged husband sence of wife are admissible to disprove marriage.

-241, 11 L. 115, BANK OF THE METROPOLIS v. NEW AND BANK.

V, 243). Lien—Current accounts between banks.

l in Winfield Nat. Bk. v. McWilliams, 9 Okl. 501, 60 where bank receives from correspondent check indorsed nd in good faith permits existing indebtedness to remain reason thereof, it is entitled to proceeds of such check l owner, though check not actually collected until after transmitting bank; Garrison v. Union Trust Co., 139 403, 102 N. W. 982, 70 L. R. A. 615, where state bank vings bank a draft for collection and latter sent it to nk, which collected it and credited to account of sav- and so notified savings bank, private bank had lien on here notification did not reach savings bank until after ıcy; Continental Nat. Bank v. First Nat. Bank, 84 Miss.

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110, 36 So. 190, where bank forwards checks to correspondent for collection under general indorsement in blank and correspondent sends them to third bank, and correspondent applies proceeds to correspondent's account without knowledge of latter's insolvency, it need not again account to initial bank for proceeds; dissenting opinion in Callaham v. Bank of Anderson, 69 S. C. 384, 48 S. E. 296, majority holding where bank refused to pay depositor's check to third person in absence of notice to depositor that bank had applied deposit in extinguishment of claims held against him by bank, bank liable to depositor for damages. See 111 Am. St. Rep. 426, 428, note.

1 How. 241-249, 11 L. 117, McKENNA v. FISK.

Syl. 2 (IV, 246). Trespass on land—Venue.

Approved in dissenting opinion in Slater v. Mexican National R. R. Co., 194 U. S. 134, 48 L. 906, 24 Sup. Ct. 581, majority denying federal court's jurisdiction over common-law action founded on liability for death by wrongful act, created by Mexican laws; Peyton v. Desmond, 129 Fed. 4, 63 C. C. A. 651, where facts and relief asked show that gravamen of action is conversion of lumber manufactured out of trees wrongfully cut and removed from plaintiff's land by defendant, and that purpose of action is to recover value of lumber, action is transitory.

1 How. 250-264, 11 L. 120, UNITED STATES v. ECKFORD.

Syl. 1 (IV, 247). Sureties on official bond—Several terms.

Approved in First Nat. Bank v. National Surety Co., 130 Fed. 406, 407, 409, 66 L. R. A. 777, where bank employee gave bond for one year and had falsified accounts for over four years so as to show false credit on depositor's account, but overdraft paid after defendant's entering into bond exceeded checks drawn during such time, surety not liable.

1 How. 277-281, 11 L. 130, IN RE KLEIN.

(IV, 249.) Unqualified discharge of bankrupt is valid.

Approved in In re Schwaninger, 144 Fed. 556, debtor having but one debt and no assets may become voluntary bankrupt.

1 How. 290-300, 11 L. 135, WILLIAMS v. UNITED STATES.

Syl. 2 (IV, 252). Admissibility of secondary evidence.

Approved in Brown v. Harkins, 131 Fed. 67, 65 C. C. A. 301, in action by distiller to recover internal revenue taxes wrongfully imposed, evidence that plaintiff's book taken from him and taken to revenue agent's office and was lost three years after disposition of criminal case against plaintiff, and that search had been made in revenue agent's office, does not justify oral evidence of its contents.

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1-322, 11 L. 143, BRONSON v. KINZIE.

IV, 254). Obligation of contracts—Change of remedy.

d in Harrison v. Remington Paper Co., 140 Fed. 391, 392, aws Kans. 1898, c. 10, p. 27, repealing Gen. St. 1889, 1204, relating to actions on stockholder's individual lia- void as against prior contracts; Myers v. Knickerbocker 139 Fed. 115, holding acts Md. Gen. Assem. 1904, p. 179, pealing remedy of creditor to enforce stockholder's lia- substituting remedy in equity, is void as against creditors ued prior to its passage; Lamb v. Powder Riv. etc. Co., 138, 440, 67 L. R. A. 558, 65 C. C. A. 570, holding void . Laws, 1895, p. 239, c. 106, as amended in 1899, pre- ree month limitations on actions on judgments of other ed on causes of action which had accrued more than six r to commencement of action on judgment, as applied nt rendered prior to its passage; Gaffney v. Jones, 39 , 81 Pac. 1059, Laws 1897, p. 52, c. 39, limiting time of e of judgment lien, is valid as to judgment in tort ren- r to its passage; Howard v. Ross, 38 Wash. 629, 631, 20, Bal. Code, §§ 5148-5150, limiting time of judgment not apply to judgment recovered after its passage on note rior to its passage; Harrigan v. Gilchrist, 121 Wis. 344, 975, receiver is not guilty of wrongdoing because he oney in collection of liability validly hypothecated by as security for debt owing by him, because he has no expect hypothecation will yield surplus for trust fund.

IV, 263). Obligation of contracts—Changing redemption.

d in Bradley v. Lightcap, 195 U. S. 19, 49 L. 73, 24 8, holding void Ill. Act of March 22, 1872, § 30, requiring eed on foreclosure sale must be taken out within speci- after expiration of time for redemption, as applied to to passage of act; Welch v. Cross, 146 Cal. 633, 106 Rep. 63, 81 Pac. 233, holding Code Civ. Proc., § 702, d in 1897, extending time of redemption of realty from sale, does not apply to judgments existing at time of its

ished in Hooker v. Burr, 194 U. S. 422, 425, 426, 48 L. , 24 Sup. Ct. 706, upholding Cal. Code Civ. Proc., § 702, d in 1895, changing time for redemption and rate of in- able in order to redeem, as applied to purchaser at fore- er amendment. See 99 Am. St. Rep. 28, 29, 30, note.

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II HOWARD.

2 How. 9-29, 11 L. 159, McNUTT v. BLAND.

Syl. 1 (IV, 268). Federal jurisdiction—Suit in name of officer.

Approved in United States v. Barrett, 135 Fed. 193, 194, action on bond of contractor for government work brought under 28 Stat. 278, c. 280, in name of United States, is not within federal jurisdiction unless requisite citizenship and amount in controversy shown; United States v. Churchyard, 132 Fed. 83, federal court has jurisdiction over suit by United States on bond of contractor given pursuant to 28 Stat. 278, c. 280, § 1, irrespective of citizenship of parties or amount in controversy. See 101 Am. St. Rep. 171, note.

2 How. 43-60, 11 L. 172, SHRIVER v. LYNN.

Syl. 4 (IV, 276). Judicial sale—Application of interested party.

Approved in County of Logan v. McKinley etc. Trust Co., 70 Neb. 405, 97 N. W. 644, where decree in foreclosure by its terms erroneously denies to owner of equity of redemption time to redeem allowed by law, he cannot attack decree by objecting to confirmation of sale.

2 How. 66-72, 11 L. 181, BURKE v. McKAY.

Syl. 3 (IV, 278). Notary—Notice of dishonor of note.

Approved in Schofield v. Palmer, 134 Fed. 755, arguendo.

2 How. 127-202, 11 L. 205, VIDAL v. GIRARD.

Syl. 2 (IV, 282). Corporation may take trust.

Approved in State v. Higby Co., 130 Iowa, 72, 106 N. W. 383, corporation organized to own, buy, sell and handle realty and to act as trustee for shares in its own stock for any person, could hold its own shares as trustee for beneficiaries named by donor; Stearns v. Newport Hospital, 27 R. I. 316, 62 Atl. 135, where under special act of incorporation, hospital authorized to take and hold realty to be used in care of sick could accept trust devise to apply property for that purpose.

Syl. 3 (IV, 283). Corporations—Taking trust property.

Approved in Danforth v. Oshkosh, 119 Wis. 281, 97 N. W. 265, arguendo.

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(IV, 287). Charitable uses—Enforcement—Indefiniteness.

d in Gidley v. Lovenberg, 35 Tex. Civ. 211, 79 S. W. of fraud to be used in organizing and maintaining home ng condition of unfortunate widows and orphans of cer- is not void because class is too indefinite; dissenting Danforth v. Oshkosh, 119 Wis. 290, 97 N. W. 268, ma- ling power of alienation not suspended where trustees of are given authority to sell and convey complete title.

IV, 289). Equity jurisdiction inherent in charity cases.

d in Grant v. Saunders, 121 Iowa, 84, 100 Am. St. Rep. W. 412, upholding bequest to trustee named for benefit d to be given by her to such objects and persons as she rthy of assistance; Snider v. Snider, 70 S. C. 561, 106 ep. 754, 50 S. E. 506, bequest to institution which took ween expiration of charter and renewal not invalid be- ch time it was unincorporated society.

IV, 294). Charitable uses—Inquiry as to validity.

d in Spead v. Tomlinson, 73 N. H. 58, 59 Atl. 379, consent to follow advice and abide by result of prayers an Science healer precludes recovery for damages for ; dissenting opinion in Stewart v. Wright, 147 Fed. 341, ermitting party induced to enter into fraudulent footrace money wagered by him.

2-209, 11 L. 236, CHAPMAN v. FORSYTH.

IV, 296). Bankruptcy—Fiduciary debts—Conversion by

d in Crawford v. Burke, 195 U. S. 189, 49 L. 152, 25 , only debts created by fraud of bankrupt while he was officer or in fiduciary capacity are excepted from opera- ischarge by Act of 1898, c. 541, § 17, subd. 4; Barrett 143 Fed. 304, discharging bankrupt arrested in action to nbezzled property where it is not shown embezzlement while acting in fiduciary capacity so as to prevent dis- bankruptcy to be release of debt; In re Harper, 133 974, Bankruptcy Act 1898, c. 541, § 17, cl. 4, does not officers of private corporations from debts created by e acting in fiduciary capacity; Boyd v. Agricultural Ins. lo. App. 42, 76 Pac. 990, agent who owes his principal not fiduciary debtor within Bankruptcy Act 1898, c. 541, . 4; Reeves v. McCracken, 69 N. J. Eq. 205, 60 Atl. 333, ng from implied understanding on conveyance of land ted from operation of bankruptcy discharge.

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Syl. 5 (IV, 301). Bankruptcy—Fiduciary debt—Estoppel by payment.

Distinguished in Field v. Howey, 132 Mich. 694, 102 Am. St. Rep. 436, 94 N. W. 215, successor of receiver did not, by proving claim against bankrupt's estate, elect to prove it as ordinary, rather than fiduciary, debt, and thereby waive right to question discharge.

2 How. 210-238, 11 L. 239, UNITED STATES v. BRIG MALEK ADHEL.

Syl. 2 (IV, 302). Admiralty—Ship's liability for master's torts.

Approved in United States v. Evans, 195 U. S. 367, 49 L. 237, 25 Sup. Ct. 46, admiralty jurisdiction of federal courts extends to libel in rem against vessel for colliding with and destroying beacon standing in water though built on piles driven into bottom; Scow No. 36, 144 Fed. 934, vessel used in dumping refuse in navigable waters contrary to 30 Stat. 1152 is liable to penalty therein provided, though act was without knowledge and contrary to general instructions of owner; The Oceanica, 144 Fed. 304, towing vessel is liable for injury to her tow resulting from her negligence notwithstanding provision of contract that towing should be at risk of tow; The W. G. Mason, 142 Fed. 917, 918, where two tugs belonging to same owner were towing steamer under contract with such owner and master of leading tug directed movements of ship, but as to own movements second tug was under control of own master, rear tug not liable in rem for stranding of tow through fault of leading tug; The Bulley, 138 Fed. 171, vessel liable for tortious acts of member of crew by which another vessel is injured, though committed without authority or knowledge of owners.

2 How. 238-241, 11 L. 251, BROCKETT v. BROCKETT.

Syl. 3 (IV, 305). Rehearing petition stays time to appeal.

Approved in In re McCall, 145 Fed. 899, filing of petition for rehearing of order confirming bankrupt's composition suspends limit for appeal therefrom until disposition of motion for rehearing; Klein v. Southern Pac. Co., 140 Fed. 214, mere filing of motion for new trial in circuit court does not, without any order of court, carry matter over to next term, so as to give court jurisdiction to then hear and dispose of it.

2 How. 263-284, 11 L. 261, MURPHY v. STEWART.

Syl. 2 (IV, 310). Amendment of verdict from judge's notes.

Approved in Elliott v. Gilmore, 145 Fed. 965, permitting amendment of verdict by court by addition of interest where it is shown by affidavits of jurors that it was their intention that interest should be computed on amount awarded from prior date.

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-318, 11 L. 269, STODDARD v. CHAMBERS.

V, 314). Ejectment on title by estoppel.

in South Penn. Oil Co. v. Calf Creek Oil etc. Co., 140 upholding equity jurisdiction over suit by defendant ions against plaintiffs therein to determine entire con- here both actions were for damages for taking oil from lefense in both actions consisted in part of estoppel in

-344, 11 L. 283, GRIGNON v. ASTOR.

V, 320). Jurisdiction defined.

in White v. Martin, 2 Alaska, 498, probate court has to appoint guardian of property of resident realty becomes insane and wanders away; Franklin Union v. Ill. 366, 110 Am. St. Rep. 248, 77 N. E. 180, defect n suit for injunction does not deprive court of jurisdic- ıvalidate order granting injunction; O'Brien v. People, , 108 Am. St. Rep. 219, 75 N. E. 112, that terms of strike were broader than allegations of petition is no defense t proceedings for violation of injunction.

V, 328). Judgment presumes jurisdictional facts proven.

in Blue Mt. Iron etc. Co. v. Portner, 131 Fed. 59, 65 295, appointment of receiver for corporation by state neral jurisdiction is not collaterally attackable on ground did not have jurisdiction of corporation's person; Cobe , 111 Mo. App. 113, 85 S. W. 133, where, after suit loan association between citizens of different states federal court, state court attempted to transfer its juris- similar suit, previously attacked to federal court, which ırisdiction and ordered sale of assets, decree not sol- sailable in action on note.

V, 334). Impeachment of decree only for fraud.

in Threadgill v. Colcord, 16 Okl. 469, 471, 85 Pac. 710, inciple to master's sale.

V, 336). Judgments—Collateral attack—Inferior courts.

in Edelstein v. United States, 149 Fed. 639, where, or had been adjudged bankrupt, he applied for dis- no appeal taken, adjudication is not collaterally at- ecause of defect in petition in proceeding against bank- king false oath; Clark v. Rossier, 10 Idaho, 358, 78 Pac. ıg to sustain action to declare trust in lands sold at e.

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2 How. 376-383, 11 L. 306, CATTS v. PHALEN.

Syl. 1 (IV, 342). Lottery—Recovery of prize fraudulently won.

Approved in Stewart v. Wright, 147 Fed. 332, affirming Wright v. Stewart, 130 Fed. 925, where there was conspiracy to defraud plaintiff by means of fake footrace, and plaintiff bet money on understanding that race was fixed for him to win, he may recover his money.

Denied in dissenting opinion in Stewart v. Wright, 147 Fed. 344, majority holding when there was conspiracy to defraud plaintiff by means of fake footrace and plaintiff bet money on understanding that race was fixed for him to win, he may recover his money.

Syl. 1 (IV, 343). Lotteries—Fraud by winner.

Approved in In re Arnold, 133 Fed. 792, creditors of bankrupts who advanced money to them on strength of fraudulent representations that they were solvent and earning enough to pay stipulated weekly interest, may prove claims in bankruptcy though they knew and intended that money was to be used in gambling.

2 How. 383-391, 11 L. 308, DADE v. IRWIN.

Syl. 2 (IV, 344). Equity—Adequacy of remedy at law.

Approved in Allen v. Myers, 1 Alaska, 117, after applicant for patent has once initiated proceedings in land office under Rev. St., §§ 2325, 2326, suit to quiet title, not in any way connected with patent proceedings, cannot be maintained.

2 How. 392-395, 11 L. 312, MINOR v. TILLOTSON.

Syl. 1 (IV, 345). Matters reviewable on appeal or error.

Approved in Coulter v. B. F. Thompson L. Co., 142 Fed. 708, it is not province of court to instruct jury as to which class of testimony on issue of fact is entitled to greater weight; J. W. Bishop Co. v. Shelhorse, 141 Fed. 648, applying principle in action against master for wrongful death.

2 How. 426-454, 11 L. 326, LAWRENCE v. McCALMOT.

Syl. 1 (IV, 347). Guaranty liberally construed.

Approved in Swift v. Jones, 135 Fed. 438, when contract of guarantor employing defendant's son as plaintiff's broker, signed by defendant as guarantor, provided for bond in company selected by plaintiff, and latter presented application for bond, which son signed but plaintiff did not get bond until after defalcation, defendant not liable on guaranty.

Syl. 4 (IV, 349.) Valuable consideration good though nominal.

Approved in Driscoll v. Driscoll, 143 Cal. 533, 77 Pac. 473, applying principle to assignment of property from father to daughter;

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Union Trust Co., 138 Mich. 616, 110 Am. St. Rep. 329, 854, 68 L. R. A. 987, since, under deed from father to ased on love and affection, daughter could not enforce a deed that grantor would pay off encumbrance, she e subrogated to claim of mortgagee as against father's father's failure to pay; Buhrer v. Baldwin, 137 Mich. W. 470, where contract of guaranty recites considera- tice of acceptance is necessary to bind guarantor; Wat- ertson, 105 Va. 285, 54 S. E. 38, 5 L. R. A. (N. S.) 1194, er of stock for recited consideration of $1, executed on to sell such stock for certain price within certain r is estopped to deny option based on valuable con- See 105 Am. St. Rep. 508, note.

-559, 11 L. 353, LOUISVILLE ETC. R. R. CO. v. LET-

IV, 355). Jurisdiction—Corporation citizen of state of

in Doctor v. Harrington, 196 U. S. 586, 49 L. 609, 25 5, presumption that stockholders of corporations are citi- te which created it does not preclude them from assert- ctual citizenship to sustain federal jurisdiction of suit them as such stockholders; Thomas v. Ohio State Uni- stees, 195 U. S. 210, 49 L. 164, 25 Sup. Ct. 24, allega- efendant, board of trustees, is citizen of and domiciled in vas created by laws of that state with power to sue and insufficient to show body is Ohio corporation; United Milwaukee Refrigerator etc. Co., 142 Fed. 253, applying t to prevent payment of rebates where one corporation ed and is owned by officers and stockholders of another; la Co. v. De Lamar, 133 Fed. 117, 66 C. C. A. 179, ndividual is president of corporation creates no presump- e is citizen of same state as corporation, for purpose ing federal court's jurisdiction in suit by or against

) Miscellaneous. Cited in Murray v. Farrell, 2 Alaska, defendant became indebted in Montana and before debt hat state he removed to Alaska, in suit in latter place, ute of limitation governs.

-581, 11 L. 378, BURWELL v. CAWOOD.

IV, 265). Decedent's debts created in business after

in Roberts v. Hale, 124 Iowa, 300, 99 N. W. 1076, where as in grain business and will provided that husband was business as trustee and distribution to be postponed

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until his death, husband could mortgage property used to store grain to pay money borrowed by him for carrying on business.

2 How. 608-619, 11 L. 397, McCRACKEN v. HAYWARD.

Syl. 1 (IV, 367). Law at date of contract governs.

Approved in Harrison v. Remington Paper Co., 140 Fed. 391, Laws Kan. 1898, c. 10, p. 27, repealing Gen. Stats. 1889, §§ 1200, 1204, giving corporation creditors individual action against stockholders on suspension of corporate business for more than one year, is void as to contracts made prior to its passage.

Syl. 3 (IV, 372). Law impairing obligation of contracts.

Approved in Hooker v. Burr, 194 U. S. 423, 48 L. 1051, 24 Sup. Ct. 706, amendment of 1895 to Cal. Code Civ. Proc., § 702, changing time for redemption and rate of interest payable on redemption, is valid as rights of purchaser on foreclosure, where amendment made subsequent to execution of mortgage but prior to sale; Harrison v. Remington Paper Co., 140 Fed. 392, Laws Kan. 1898, c. 10, p. 27, repealing Gen. St. 1889, §§ 1200, 1204, giving corporation creditors individual action against stockholder on suspension of corporate business for more than one year, is void as to contracts made prior to its passage; Myers v. Knickerbocker Trust Co., 139 Fed. 115, Md. Acts Gen. Assem. 1904, c. 101, p. 179, repealing preexisting remedy of creditor against stockholder, is void as to creditors who became such and had brought suit prior to its passage; Lamb v. Powder River etc. Co., 132 Fed. 440, 67 L. R. A. 558, 65 C. C. A. 570, Colo. Sess. Laws, 1895, p. 239, c. 106, as amended in 1899, prescribing limitation on actions on foreign judgments based on cause of action which had accrued more than six years prior to commencement of action on judgment, is void as to action on foreign judgment rendered prior to passage of act; Welsh v. Cross, 146 Cal. 626, 106 Am. St. Rep. 63, 81 Pac. 230, amendment of 1897 to Code Civ. Proc., § 702, extending time for redemption from execution sale, does not apply to judgments existing at time of its passage; Smith v. Jennings, 67 S. C. 336, 45 S. E. 826, joint resolution requiring state treasurer to write off books, as obligations of state, certain past due bonds is not law impairing obligation of contracts; Gaffney v. Jones, 39 Wash. 589, 81 Pac. 1059, Laws 1897, p. 52, c. 39, limiting duration of judgment lien, is valid as to judgment in tort rendered before its passage; Howard v. Ross, 38 Wash. 630, 80 Pac. 820; Bal. Code, §§ 5148-5150, limiting time to sue on judgments, is void as to judgment recovered after its passage on note executed prior to passage. See 99 Am. St. Rep. 28, note.

Syl. 4 (IV, 379). Validity of law changing foreclosure sale.

Approved in Welsh v. Cross, 146 Cal. 633, 106 Am. St. Rep. 63, 81 Pac. 233, amendment of 1897 to Code Civ. Proc., § 702, extend-

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for redemption from execution sale, does not apply to existing at time of its passage.

9-653, 11 L. 619, GAINES v. CHEW.

V, 381). Multifariousness defined.

d in Howe & Davidson Co. v. Hangan, 140 Fed. 183, g water rights in complainant under contract with water and interference with such rights against which injunc- adjustment of rights sought, is not multifarious because ing of others who were alleged to claim interest in com- nds and who, in collusion with other defendants, were default on bonds and foreclose on property; United etc. Co. v. Wright, 132 Fed. 197, bill to require accounting endant as agent is not multifarious because different s set out, all growing out of agency, and discovery and demanded as to each; Hosmer v. Wyoming Ry. etc. Fed. 888, 65 L. R. A. 81, refusing to reverse decree in erformance of sale of mine for multifariousness where action joined are not repugnant or inconsistent and only nce to defendant arises from his having to pay illegal

IV, 385). Multifariousness—Suit against several grantees.

d in Fisher v. Trust Co., 138 N. C. 231, 50 S. E. 661, alleging deceit of intestate for many years by sys- raud of one of defendants, numerous fraudulent steps ed, and fraudulent connection of others in scheme being hey being made parties and asked to surrender property received, is not demurrable for misjoinder.

ished in dissenting opinion in Fisher v. Trust Co., 138 50 S. E. 666, majority holding complaint alleging deceit te for many years by systematic fraud of one of de- numerous fraudulent steps being set out, and fraudulent of others in scheme being stated, they being made d asked to surrender property they had received, is rable for misjoinder.

IV, 385). Jurisdiction of probate of wills.

d in Ewing v. McIntyre, 133 Mich. 462, 95 N. W. 541, p. Laws, §§ 650, 651, probate court may admit lost or will to probate. See 110 Am. St. Rep. 475, note.

(IV, 386). Fraud—Wills—Concurrent equity jurisdiction.

d in Medill v. Snyder, 71 Kan. 598, 81 Pac. 219, time statute of wills for bringing action in district court to l is not extended by Code Civ. Proc., § 23.

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III HOWARD.

3 How. 9-32, 11 L. 469, ALDRIDGE v. WILLIAMS.

Syl. 2 (IV, 392). Statutory construction—Legislative debates.

Approved in Ex parte Helton, 117 Mo. App. 621, 93 S. W. 915, construing Laws 1905, pp. 168, 169, relating to hunter's licenses.

Syl. 6 (IV, 393). Departmental regulations as law.

Approved in Peters v. United States, 2 Okl. 123, 33 Pac. 1033, false swearing before United States land receiver in pending contest is punishable as perjury under U. S. Rev. St., § 5392.

3 How. 87-103, 11 L. 506, KENDALL v. STOKES.

Syl. 5 (IV, 398). Mandamus as suit.

Approved in In re Epley, 10 Okl. 644, 64 Pac. 21, judgment granting peremptory mandamus may be stayed by order of supreme justice after appeal taken; dissenting opinion in Henry v. State, 87 Miss. 95, 39 So. 884, arguendo. See 98 Am. St. Rep. 874, note.

3 How. 133-150, 11 L. 529, GORDON v. APPEAL TAX COURT.

Syl. 2 (IV, 403). Obligation of contracts—Corporations—Taxation.

Distinguished in New York v. State Board of Tax Commrs., 199 U. S. 40, 41, 50 L. 76, 77, 105 Am. St. Rep. 701, 702, 25 Sup. Ct. 715, N. Y. Laws 1899, c. 712, imposing special franchise tax, does not impair contract by which state or city gave right to construct and maintain street railways in New York in consideration of payment of fixed annual sum or percentage of earnings; American Smelting etc. Co. v. People, 34 Colo. 252, 253, 82 Pac. 535, upholding Sess. Laws 1902, p. 73, c. 3, § 65, imposing license tax on foreign corporations, as applied to foreign corporations already doing business in state.

Syl. 6 (IV, 406). Taxation of capital stock of corporation.

Approved in Southwestern Tel. etc. Co. v. San Antonio, 32 Tex. Civ. 102, 73 S. W. 860, franchises of corporation exercised and enjoyed by it in a city are property within meaning of charter requiring tax on all property.

3 How. 151-186, 11 L. 537, SEARIGHT v. STOKES.

Syl. 1 (IV, 406). Contract between state and government.

Cited in Wheeling etc. R. R. Co. v. Town of Triadelphia, 58 W. Va. 492, 52 S. E. 501, reciting history of litigation.

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197-211, 11 L. 559, TAYLOR v. UNITED STATES.

(IV, 409). Construction of revenue laws.

ed in Johnson v. Southern Pac. Co., 196 U. S. 17, 49 L. Sup. Ct. 158, equipment of locomotive and dining-car with couplers of such different types as not to couple with r automatically does not comply with 27 Stat. 531, c. 196, w No. 36, 144 Fed. 934, under 30 Stat. 1152, 1153, vessel depositing refuse in navigable waters is subject to penalty, ct was without knowledge of and contrary to general in- of owner; State v. Western Union Tel. Co., 96 Minn. 19, W. 570, construing Laws 1891, p. 70, c. 8, as amended relating to taxation of property of telegraph companies as

212-235, 11 L. 565, POLLARD'S LESSEE v. HAGAN.

(IV, 412). Land under navigable water is state's.

ed in Crawford Co. v. Hathaway, 67 Neb. 351, 108 Am. 668, 93 N. W. 789, determining water rights between owners and appropriators under irrigation act; Taylor v. vealth, 102 Va. 770, 102 Am. St. Rep. 865, 47 S. E. 879, Acts 1899-1900, p. 797, c. 757, leasing tract of land lying aters of York river below low-water mark.

(IV, 414). Tide lands not in state.

ed in United States v. Roth, 2 Alaska, 259, holding pos- f homestead entryman under public land laws coextensive ndaries of his lands, and extends over shore lands of waters abutting thereon.

36-266, 11 L. 576, CARY v. CURTIS.

(IV, 416). Federal jurisdiction dependent on Congress.

ed in Kentucky v. Powers, 201 U. S. 24, 50 L. 644, 26 387, denying right of removal of criminal prosecution f denial, in summoning or impaneling jurors, of any equal ts secured to accused by federal law.

(IV, 417). Assumpsit for money had.

ed in Henderson v. Koenig, 192 Mo. 709, 91 S. W. 91, robate judge contended that act of 1897, providing for stead of fees and providing for election of clerk, and clerk to collect fees and pay them to city, he could fees after law declared void; Baltimore etc. R. R. Co. 102 Va. 647, 47 S. E. 825, where bank received checks, of plaintiff, from his agent for collection, and checks properly indorsed, bank not liable to plaintiff though epository of plaintiff.

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(IV, 416.) Miscellaneous. Cited in dissenting opinion in Tampa Waterworks Co. v. Tampa, 199 U. S. 247, 50 L. 175, 26 Sup. Ct. 23, majority upholding ordinance reducing water rates.

3 How. 266-292, 11 L. 591, WHITE v. NICHOLLS.

Syl. 3 (IV, 419). Communication in discharge of duty is privileged.

See 104 Am. St. Rep. 138, note.

Syl. 5 (IV, 420). Libel—Words used in judicial proceedings.

Approved in Lauder v. Jones, 13 N. D. 554, 101 N. W. 917, affidavit made by defendant in certain court proceeding is inadmissible to show malice in publishing libel sued for. See 104 Am. St. Rep. 124, 127, note.

Syl. 8 (IV, 420). Libel—Publication making one odious or ridiculous.

Approved in Western Union Tel. Co. v. Cashman, 149 Fed. 371, telegraph company not liable for libel in transmitting libelous message received in ordinary course of business; Prewitt v. Wilson, 128 Iowa, 203, 103 N. W. 367, where publication is libelous per se, falsity and malice are presumed; Morse v. Times etc. Printing Co., 124 Iowa, 713, 719, 100 N. W. 869, 871, article designed and calculated to exhibit plaintiff as shallow, ridiculous and contemptible person, dishonest and undeserving of confidence, is libelous per se; Evening Post Co. v. Richardson, 113 Ky. 649, 68 S. W. 668, in action for libel based on communication published in defendant's newspaper charging plaintiff with corruption as election officer, fact that communication sent to defendant by experienced and prudent journalist furnishes sufficient basis for plea of qualified privilege; Lescale v. Jos. Schwartz Co., 116 La. 308, 40 So. 713, holding litigant who, without probable cause, makes defamatory allegations against adversary knowing them to be false, is liable in damages.

Syl. 9 (IV, 421). Express malice makes publication libelous.

See 104 Am. St. Rep. 116, note.

Syl. 10 (IV, 421). Libel—Malice is for jury.

Approved in Prewitt v. Wilson, 128 Iowa, 206, 103 N. W. 368, whether privilege relied on in justification of alleged libel was not exceeded and publication made with actual malice, is for jury.

3 How. 292-332, 11 L. 603, EX PARTE CHRISTY.

Syl. 13 (IV, 425). Obiter dicta not authority.

Approved in Linstroth Wagon Co. v. Ballew, 149 Fed. 966, following rule.

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(IV, 425). Prohibition by supreme court.

d in Barber Asphalt etc. Co. v. Morris, 132 Fed. 955, A. 761, 66 C. C. A. 55, upholding jurisdiction of circuit appeals to mandamus circuit judge to vacate order stay-edings in circuit court pending final determination in ts of appeals in actions on claims against city. See 111 Rep. 934, 936, note.

3-413, 11 L. 622, OLIVER v. PIATT.

IV, 426). Following trust property.

d in Harrigan v. Gilchrist, 121 Wis. 252, 99 N. W. 942, rule in suit to compel receiver of insolvent corporation t.

(IV, 428). Presumption of knowledge of trusts by co-

d in Runner v. Woitke, 2 Alaska, 395, one partner can-realty of mercantile firm unless authorized to do so in

(IV, 429). Quitclaim deed—Bona fide purchaser.

d in 105 Am. St. Rep. 859, note.

ished in Mosier v. Momsen, 13 Okl. 50, 74 Pac. 908, where arty to realty is evidenced by quitclaim deed, and ad-mant claims under execution against debtor, who is not have had title, quitclaim title is paramount; Martin v. 71 S. C. 77, 50 S. E. 674, under Civ. Code, § 2367, under quitclaim deed may show he is bona fide purchaser two grantors held under warranty deeds.

(IV, 431). Multifariousness—Complicated transactions.

d in Hosmer v. Wyoming Ry. etc. Co., 129 Fed. 888, A. 81, refusing to reverse judgment because bill multi-here only inconvenience arising from joinder is subjection ant to payment of illegal costs; Fisher v. Southern Loan Co., 138 N. C. 232, 50 S. E. 662, upholding complaint al-estate deceived by systematic fraud of one of defend-e fraudulent connection of other defendants shown.

(IV, 431). Limitations run against trust when.

d in Eddy v. San Francisco, 148 Fed. 280, suit against force tax levy for Dupont street bonds as provided by Cali-atute is barred by laches of bondholder who waited ars after issuance of bonds and eight years after their before suing.

(IV, 432). No general rule as to multifariousness.

d in South Penn. Oil Co. v. Calf Creek etc. Co., 140 Fed. enjoin further prosecution of two actions at law against

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complainant, which involve same indivisible subject matter, is not multifarious because claims of two plaintiffs are separate and distinct; United Cigarette etc. Co. v. Wright, 132 Fed. 197, bill to require accounting for defendant as agent is not multifarious because different and separate transactions are set out, all growing out of agency, and discovery and accounting demanded as to each.

Syl. 17 (IV, 432). Multifariousness, how objected to.

Approved in Emmons v. National etc. Assn., 135 Fed. 692, 68 C. C. A. 327, applying rule to bill by borrowing stockholder to have loan contract canceled for fraud and usury; Barber v. National Carbon Co., 129 Fed. 376, 64 C. C. A. 40, applying rule in suit for infringement of patent.

3 How. 413-426, 11 L. 658, WASHINGTON BRIDGE CO. v. STEWART.

Syl. 1 (IV, 433). Questions raised on second appeal.

Approved in Lorimer v. Fairchild, 68 Kan. 342, 75 Pac. 128, where cause was remanded for new trial and record in supreme court presents same question presented to court of appeals, supreme court will re-examine case where former decision was erroneous and in conflict with other opinion of supreme court and of another department of court of appeals; United States v. Denver etc. R. R. Co., 11 N. M. 154, 66 Pac. 552, applying rule in action involving right of railroad to cut timber on public lands along line.

3 How. 441-463, 11 L. 671, CARROLL v. SAFFORD.

Syl. 4 (IV, 438). Public lands sold not subsequently salable.

Approved in McMichael v. Murphy, 12 Okl. 161, 70 Pac. 191, one making settlement on tract while it is covered by homestead entry of another is mere trespasser.

Syl. 7 (IV, 438). State taxation prior to patent.

Approved in United States v. Detroit Timber etc. Co., 200 U. S. 338, 50 L. 506, 26 Sup. Ct. 282, bona fide purchaser of standing timber from holder of receiver's final receipts cannot, on avoidance of patents, for fraud of entryman, be required to account for timber cut; McMichael v. Murphy, 12 Okl. 160, 70 Pac. 191, one making settlement on tract while it is covered by homestead entry of another is mere trespasser; Flanagan v. Forsythe, 6 Okl. 236, 50 Pac. 155, exemption from liability for debts of lands entered as homesteads does not apply after final proof made and final or patent certificate issued.

3 How. 515-534, 11 L. 705, CAMDEN v. DOREMUS.

Syl. 1 (IV, 448). Objections to evidence must be specific.

Approved in American Car etc. Co. v. Brinkman, 146 Fed. 716, applying rule in action against master for personal injuries to servant.

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534-553, 11 L. 714, MARYLAND v. BALTIMORE ETC. CO.

(IV, 450). Counties are state divisions.

ed in Kittel v. Trustees' Internal Improvement Fund, 139 construing Florida Laws 1854, p. 9, c. 610, known as in-provement fund act; dissenting opinion in Battery Park Madison Co. Commissioners, 135 N. C. 250, 47 S. E. 1021, holding Laws 1903, p. 490, c. 289, declaring that for of funding floating indebtedness of Madison county, com-s are authorized to issue new bonds, is not mandatory.

(IV, 451). Penalty for breach of duty is punishment.

ed in Atwood v. Buckingham, 78 Conn. 427, 62 Atl. 618, Pub. Acts. 1905, p. 413, 217, limiting recovery of penalty pending for failure of administrator to file inventory.

(IV, 451). Repeal of statute remits penalty.

ed in Atwood v. Buckingham, 78 Conn. 425, 62 Atl. 617, 1902, § 324, providing penalty for failure of administrator nventory within specified time, was repealed, and Acts 413, c. 217, declaring that in all actions pending and under § 324, recovery should be $1 only as penalty, was ve; Pensacola etc. R. R. Co. v. State, 45 Fla. 89, 110 Rep. 69, 33 So. 986, repeal of Laws 1887, p. 123, c. 3746, ng penalty for charging higher passenger rates than al-ending appeal, authorizes reversal.

556-568, 11 L. 724, UNITED STATES v. FREEMAN.

(IV, 453). Thing within intent of statute.

ed in United States v. American Surety Co., 200 U. S. 440, 26 Sup. Ct. 168, labor and materials used in prosecu-public work, whether furnished under contract directly to r or to subcontractor, are within obligation of surety under suant to 28 Stat. 278, c. 280; Russ v. Commonwealth, 210 53, 105 Am. St. Rep. 825, 60 Atl. 172, 1 L. R. A. (N. S.) er resolution of 1897, relating to attendance by legislature tion of Grant's monument, committee to which matter re-uld contract for meals for legislators.

(IV, 454). Statutes in pari materia.

ed in Wetmore v. Markoe, 196 U. S. 77, 49 L. 394, 25 Sup. iability for alimony due under divorce decree is not barred ruptcy discharge; Johnson v. Southern Pac. Co., 196 U. S. 371, 25 Sup. Ct. 158, construing Comp. St. 1901, p. 3174, to automatic couplers; Mosle v. Bidwell, 130 Fed. 335, 336, A. 533, customs administrative act 1890, § 20, relating to al of merchandise from bonded warehouses, means such as merchandise would be subjected to at time of with-

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drawal; State v. Frederickson, 101 Me. 42, 63 Atl. 537, under anti-liquor law (Rev. St., c. 29, § 40), cider is intoxicating liquor; Henry v. State, 87 Miss. 59, 39 So. 872, Rev. Code, 1892, § 3201, providing for working of convicts on farm leased for that purpose, is not repealed by act 1894, providing for establishment of penitentiary farm.

Syl. 5 (IV, 455). Statutory construction—Statutes in pari materia.

Approved in Territory v. Denver etc. R. R. Co., 12 N. M. 429, 78 Pac. 74, construing Laws 1901, p. 96, c. 45, §§ 3, 4, relating to inspection of hides.

3 How. 578-589, 11 L. 734, UNITED STATES v. PRESCOTT.

Syl. 2 (IV, 460). Theft of moneys no defense on bond.

Approved in Van Trees v. Territory, 7 Okl. 364, 365, 367, 54 Pac. 497, 498, 500, in action on official bond of county treasurer, fact that moneys were deposited in solvent bank, which thereafter failed, resulting in loss, without fault on part of treasurer, is no defense; Poole v. Burnet Co., 97 Tex. 84, 76 S. W. 427, county treasurer is liable for school fund though bank in which he kept fund turned out to be insolvent.

Distinguished in Johnson v. Fleming, 116 Ky. 682, 50 S. W. 855, under Ky. St., § 411, relating to appointment of banks for deposits made in court, where court failed to select depositary commissioner, is not insurer of solvency of bank selected by him.

3 How. 611-620, 11 L. 749, CHAIRES v. UNITED STATES.

(IV, 464.) Miscellaneous. Cited in Wilson v. Knight, 48 Fla. 200, 37 So. 187, reciting history of litigation.

3 How. 636-649, 11 L. 760, DAVIESS v. FAIRBAIRN.

Syl. 1 (IV, 466). Repeals by implication.

Approved in Johnson v. Southern Ry., 69 S. C. 326, 48 S. E. 262, holding Code, § 1711, requiring adjustment by carriers of losses or damages from breakage within sixty days on penalty of $50, repealed by Acts 1903, p. 81.

3 How. 674-690, 11 L. 778, CLYMER v. DAWKINS.

Syl. 3 (IV, 471). Partition judgment as ouster of cotenant.

See 109 Am. St. Rep. 613, note.

Syl. 4 (IV, 472). Entry by one cotenant.

Approved in Scott v. Mineral Dev. Co., 130 Fed. 501, 503, 64 C. C. A. 659, entry into possession of any part of tract under deed containing specific metes and bounds and purporting to convey same, and continuation thereof, though actually of only part, for

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period gives occupant adverse possession to whole. See St. Rep. 610, 619, note.

93-707, 11 L. 787, McDONOGH v. MILLAUDON.

(IV, 474). Time to move to dismiss error.

ed in Long v. Farmers' State Bank, 147 Fed. 362, where dismiss writ of error was not filed until within two days hen cause was set down for hearing and after defendant brief taking issue on assignment of errors motion was too

07-717, 11 L. 794, GANTLY v. EWING.

(IV, 475). Statutes changing execution sales.

ed in Welsh v. Cross, 146 Cal. 633, 106 Am. St. Rep. 63, 81 holding void Code Civ. Proc., § 702, as amended 1897, time for redemption, as to judgments existing at time ment.

ished in Hooker v. Burr, 194 U. S. 423, 99 Am. St. Rep. 1051, 24 Sup. Ct. 706, upholding Cal. Code Civ. Proc., amended in 1895, changing time for redemption and rate t payable in order to redeem, as to prior mortgages.

20-750, 11 L. 800, NEIL v. OHIO.

(IV, 477). Contract between government and Ohio con-

ed in Wheeling etc. R. R. Co. v. Town of Triadelphia, 58 92, 52 S. E. 501, reciting history of litigation.

50-763, 11 L. 814, HICKEY v. STEWART.

(IV, 478). Judgments—Inquiry into jurisdiction.

ed in Southern Pine L. Co. v. Ward, 16 Okl. 158, 85 Pac. ying principle in action to foreclose trust deed where pleads superior title under prior judgment.

63-771, 11 L. 820, WILSON v. SMITH.

(IV, 480). Recovery of money from subagent.

ed in Morris v. Alabama Carbon Co., 139 Ala. 623, 36 where, prior to collection of draft, forwarding bank made ment, drawer of draft was entitled to recover amount sub- collected from collecting bank.

ished in Reed Grocery Co. v. Canton Bank, 100 Md. 303, 17, where payee of draft, deposited it with bank and re- edit at bank as depositor, proceeds could not be recovered r, on failure of consideration as between drawer and payee.

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Syl. 2 (IV, 482). Application of sums collected by subagent.

Approved in Winfield Nat. Bk. v. McWilliams, 9 Okl. 509, 60 Pac. 233, where bank in due course receives from correspondent check indorsed in blank and permits existing balance to remain unpaid by reason thereof, it is entitled to proceeds of such check against real owner, though check not paid until after failure of transmitting bank.

IV HOWARD.

4 How. 16, 17, 11 L. 855, TOMBIGBEE R. R. CO. v. KNEELAND.

Syl. 1 (IV, 487). Suit by foreign corporation.

Cited in Kansas City etc. Ry. Co. v. Stevenson, 135 Fed. 554, arguendo.

4 How. 17-19, 11 L. 856, LEVI v. THOMPSON.

Syl. 1 (IV, 487). Execution—Holder of receiver's certificate.

Approved in Flanagan v. Forsythe, 6 Okl. 235, 50 Pac. 155, exemption from liability for debts of lands entered as homestead does not apply after final proof made and final or patent certificates issued.

4 How. 80-121, 11 L. 884, GRATIOT v. UNITED STATES.

Syl. 3 (IV, 492). Departmental regulations as law.

Approved in Peters v. United States, 2 Okl. 123, 33 Pac. 1033, false swearing before land office receiver in contest pending before him is perjury within Rev. St. U. S., § 5392.

4 How. 242-251, 11 L. 957, CLIFTON v. UNITED STATES.

Syl. 2 (IV, 499). Presumptions where evidence withheld.

Approved in The Degama, 150 Fed. 324, applying rule in damages for collision between moving and moored vessel; Choctaw &.M. R. Co. v. Newton, 140 Fed. 238, applying rule in action for breach of railroad construction contract; The Georgetown, 135 Fed. 859, where evidence in favor of one of two vessels in collision largely preponderates, including evidence of disinterested witnesses, failure of other to call members of own crew in circumstance entitled to be considered against her; Sullivan v. Sullivan, 188 Mass. 382, 74 N. E. 608, where maker of note was living with payee at time of latter's death, and some time thereafter burned it, it is presumed that at time of its destruction it was valid and could be enforced by administrator of payee; Yarborough v. Hughes, 139 N. C. 211, 51 [illegible] 908, applying rule in suit to set aside sale under power given in [illegible]tract.

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51-262, 11 L. 961, BUCKLEY v. UNITED STATES.

(IV, 502). Customs duties—Averments to show probable

ed in McInerney v. United States, 143 Fed. 737, verified hip's manifest containing list of alien passengers, delivered tion officers as report under requirement of 26 Stat. 1085, blic record and admissible in evidence; Tucker v. Fire Ins. 7. Va. 43, 51 S. E. 91, one having sufficient knowledge of property destroyed by fire to speak with intelligence on ay testify as to his opinion of its value.

62-286, 11 L. 967, MUSSON v. LAKE.

IV, 503). Law governing performance of contracts.

ed in Sullivan v. German Nat. Bank, 18 Colo. App. 103, 70 one indorsing and assigning in another state a certificate of payment of gambling debt cannot defend action on in- as against bona fide purchaser.

36-289, 11 L. 977, UNITED STATES v. McLEMORE.

IV, 503). Injunction against judgment for government.

ed in Kirk v. United States, 131 Fed. 339, bill is not main- gainst United States and marshal jointly to restrain seizure inant's property, on judgment in favor of United States ed recognizance; Board of Education v. Volk, 72 Ohio St. E. 650, Rev. St., § 2676, creating liability against "owner" ssor" of premises whereon wrongful excavation is made, pply to boards of education.

IV, 504). Inquiry into payment of judgment—Satisfaction.

ed in King v. Davis, 137 Fed. 233, where petitioner apply- icate judgment in ejectment, not party to action, is in , she is entitled to order directing marshal, in executing ossession, to leave her possession undisturbed.

39-298, 11 L. 979, ZELLER'S LESSEE v. ECKERT.

IV, 504). Facts not considered on error.

ed in Coulter v. Thompson Lumber Co., 142 Fed. 708, it is ice of court to instruct as to which one of two classes of on issue of fact is entitled to greater weight; J. W. Bishop elhorse, 141 Fed. 648, applying rule in action for damages aster for wrongful death.

IV, 505). Possession in privity with owner—Limitations.

ed in Eddy v. San Francisco, 148 Fed. 280, under Cal. St. 433, c. 326, relating to Dupont street widening bonds, suit older to enforce levy of tax to pay bonds, is barred where rought until lapse of twenty years from issuance and eight r maturity of bonds; Rich v. Victoria etc. Min. Co., 147 Fed.

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387, where, in ejectment, defendant, who was tenant in common with plaintiff, claimed title by adverse possession, instruction that defendant's possession was sufficient if neighbors appreciated his claim to exclusive right, is erroneous; Fountain v. Lewiston Nat. Bank, 11 Idaho, 469, 83 Pac. 509, where A owing bank on mortgage gave it deed and took option to purchase for amount of debt, and later released option and bank took possession, possession was hostile to A and heirs.

4 How. 298-317, 11 L. 983, KNOX v. SMITH.

Syl. 2 (IV, 508). Equitable relief dependent on bill.

Approved in United States v. Martindale, 146 Fed. 293, under indictment against national bank officer for misapplication of funds by drawing checks on bank when he had no deposit, government cannot impeach apparent credit on books by showing deposit previously entered was false.

4 How. 317-327, 11 L. 992, COOKENDORFER v. PRESTON.

Syl. 3 (IV, 508). Usage as law.

Approved in Cudahy Packing Co. v. State Nat. Bank, 134 Fed. 545, 67 C. C. A. 662, provision for payment of attorney's fees in case note not paid at maturity does not destroy negotiability.

4 How. 327-335, 11 L. 996, RANKIN v. HOYT.

Syl. 1 (IV, 509). Public officers presumed to do duty.

Approved in Pine Tree Lumber Co. v. Fargo, 12 N. D. 376, 96 N. W. 363, in action against city because it had diverted moneys realized by assessments for special fund, plaintiff shows prima facie case by proof of creation of fund and credit of money to pay warrants and that warrants were presented but not paid; Board of Education v. Boyer, 5 Okl. 233, 47 Pac. 1092, where petition signed by electors is presented to city board of education to have adjacent territory attached for school purposes and board so orders, presumption is that board acted regularly.

4 How. 336-352, 11 L. 1000, HARRIS v. ROBINSON.

Syl. 2 (IV, 510). Notary giving notice of dishonor of note.

Approved in Schofield v. Palmer, 134 Fed. 755, certificate of notary that he gave notice of dishonor to indorser is not prima facie evidence of that fact.

4 How. 404-420, 11 L. 1031, SMYTH v. STRADER.

Syl. 2 (IV, 513). Note in firm name payable to partner.

Approved in In re McIntire, 132 Fed. 298, creditor seeking to prove note given by partner in firm name in renewal of individual debt against firm estate in bankruptcy must show other partner assented to transaction.

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21-448, 11 L. 1038, MACKAY v. DILLON.

IV, 514). Private survey not binding on government.

ed in United States v. Montana Lumber etc. Co., 196 U. S. . 605, 25 Sup. Ct. 367, private survey is inadmissible in ac- overnment to recover value of timber cut from unsurveyed how that land when surveyed will be included in railroad

49-464, 11 L. 1051, LES BOIS v. BRAMELL.

(IV, 515). Private survey not binding.

ed in United States v. Montana Lumber etc. Co., 196 U. S. . 605, 25 Sup. Ct. 367, private survey is inadmissible in ac- overnment to recover value of timber cut from unsurveyed how that land when surveyed will be included in railroad

(IV, 516). Confirmation and survey equivalent to patent.

ed in Catron v. Laughlin, 11 N. M. 633, 72 Pac. 32, apply- iple to confirmation of claim for land under grant from

67-500, 11 L. 1059, ASPDEN v. NIXON.

IV, 517). Judgment against foreign executor in other state.

ed in Schurmeier v. Connecticut etc. Ins. Co., 137 Fed. 45, A. 22, in allowing claims against estates of decedent federal e governed by same rules as local tribunals; Alice E. Min. anden, 136 Fed. 254, nonresident creditor may establish federal courts against personal representatives of decedent. uisite amount and citizenship appear, though state of esidence limits right to establish such claims to proceedings e court.

03-566, 11 L. 1076, MICHOUD v. GIROD.

IV, 520). Purchaser by executor at own sale.

ed in Haggart v. Wilczinski, 143 Fed. 27, where mortgage closed by substituted trustee, whose appointment was in- was voidable only and not void; Burns v. Cooper, 140 Fed. g aside sale of ward's property under order of court where procured such sale for sole purpose of acquiring title him- ke v. Bundrick, 72 Kan. 188, 83 Pac. 405, sale of decedent's executor to surety on his bond on order procured by fraud may be set aside though surety innocent; Hayes 88 Mass. 511, 74 N. E. 936, where one of debtor trustees, onsent of cotrustee, procured third party to purchase note han face, which was part of trust fund, after which pur- veyed to trustee's wife, beneficiary could not compel trustee t for deficiency; Barnes v. Lynch, 9 Okl. 185, 187, 59 Pac.

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1006, 1007, applying principles where corporation's officers bought property of corporation; Marquam v. Ross, 47 Or. 405, 83 Pac. 859, trust company lending on encumbered property and accepting trust deed as security could purchase on foreclosure of first mortgage; Scottish-American Mtg. Co. v. Clowney, 70 S. C. 242, 49 S. E. 573, where trustee with power of sale for reinvestment sells to wife, sale is voidable by beneficiaries.

Syl. 2 (IV, 525). Limitations start against constructive trust when.

Approved in Stanwood v. Wishard, 134 Fed. 964, suit by clients against attorney for declaration of trust in property purchased by defendant while acting in their behalf, not barred in six years, where complainants resided at distance and had no knowledge of transaction.

4 How. 567-574, 11 L. 1105, UNITED STATES v. ROGERS.

Syl. 1 (IV, 527). Federal laws govern Indian country.

Approved in Brown v. United States, 146 Fed. 977, larceny committed in Indian reservation in Oklahoma by one not an Indian is crime against United States laws cognizable by territorial courts.

4 How. 589-591, 11 L. 1115, HUNT v. PALAO.

Syl. 2 (IV, 531). No error where lower court abolished.

Distinguished in Cheney v. Alaska etc. Min. Co., 148 Fed. 810, under 31 Stat. 321, requiring district judges in Alaska to divide division into precincts, where judge abolished Douglass Island precinct and provided that its territory should become part of Juneau precinct, commissioner of Juneau could remove administrator appointed by Douglass precinct commissioner.

4 How. 591-640, 11 L. 1116, RHODE ISLAND v. MASSACHUSETTS.

Syl. 1 (IV, 532). Possession as evidence of state boundary.

Approved in Louisiana v. Mississippi, 202 U. S. 54, 50 L. 932, 26 Sup. Ct. 408, determining disputed boundary between Mississippi and Louisiana in waters of Lake Borgne and Mississippi sound; Moore v. McGuire, 142 Fed. 798, holding Island No. 76, in Mississippi river, was in state of Mississippi. See 101 Am. St. Rep. 154, note.

4 How. 640-645, 11 L. 1138, HARDEMAN v. ANDERSON.

Syl. 1 (IV, 532). When supersedeas issued.

Approved in Boston & M. R. Co. v. Gokey, 150 Fed. 687, where district court judgment has been affirmed by court of appeals, and mandate sent down, but defeated party has applied for certiorari from supreme court to review decision of court of appeals, district court will stay execution pending certiorari.

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16-709, 11 L. 1141, WILSON v. ROUSSEAU.

IV, 534). Effect of extension of patent on license.

d in Wagner Typewriter Co. v. Webster Co., 144 Fed. 409, typewriter equipped with patented ribbon spool may re- ribbon and spool as matter of repairs; Bobbs-Merrill Co. 139 Fed. 187, where publisher of copyrighted books sold etailers, resale by latter is not infringement though books notice that no dealer could sell them at less than price ublisher; New York Phone Co. v. Edison, 136 Fed. 613, con- clusive license to use and sell phonographs.

.) Miscellaneous. Cited in Cortelyou v. Chas. Eneu John- 138 Fed. 114, owner of patent for rotary neostyle used for plication may sell machines under license restriction that be used only with paper and ink made by licensor.

V HOWARD.

-91, 12 L. 60, ALEXANDRIA CANAL CO. v. SWANN.

IV, 545). Arbitration by consent of parties.

d in Burrell v. United States, 147 Fed. 49, wherein action court parties agree to trial before arbitrators, court may ment on award; Swift v. Jones, 145 Fed. 493, where action s brought in circuit court, trial judge cannot, even on stipu- parties, order trial before special master authorized to hear on issues of fact and report findings to court.

IV, 546). Corporation attorney's acts presumed authorized.

d in National Bank of Guthrie v. Earl, 2 Okl. 623, 39 Pac. nal banks may, through president, employ attorneys to con- ation, and are liable for compensation to them when so

3-121, 12 L. 70, BARRY v. MERCEIN.

IV, 549). Circuit court appeals—Amount in dispute.

d in Ah Son v. United States, 200 U. S. 611, 50 L. 619, t. 752, following rule; Clifford v. Williams, 131 Fed. 102, rt has no jurisdiction to issue habeas corpus to determine y between persons who are citizens of different states, t to custody of their child; Gallagher v. Asphalt Co. of 5 N. J. Eq. 282, 55 Atl. 268, denying federal jurisdiction diversity of citizenship over bill by creditor under insolvent act to enjoin corporation from exercising franchise.

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5 How. 127-134, 12 L. 81, NELSON v. HILL.

Syl. 1 (IV, 550). Multifariousness must be raised before answer.

Approved in Barber v. National Carbon Co., 129 Fed. 377, 64 C. C. A. 40, applying rule in suit for infringement of patent by licensee.

5 How. 134-141, 12 L. 85, ROWAN v. RUNNELS.

Syl. 3 (IV, 552). Following state constitutional construction.

Approved in Board of Commrs. v. Tollman, 145 Fed. 763, where at time railroad bonds in suit were issued by county under statutory authority there was no state decision construing constitution, which it was subsequently claimed was violated by statute under which bonds issued, federal court will give its own construction to such constitution.

5 How. 141-143, 12 L. 88, TRULY v. WANZER.

Syl. 4 (IV, 555). Injunction, when issuable.

Approved in True v. Mendenhall, 67 Kan. 504, 73 Pac. 70, refusing equitable relief against justice's judgment void because justice after due service of summons failed to attend at time to which continuance ordered, but afterward made another continuance, in pursuance of which judgment rendered without further notice to defendant; Callaway v. Mayor etc. of Baltimore, 99 Md. 320, 57 Atl. 663, where pursuant to statute city passed ordinance of estimates authorizing portion of water loan for purchase of reservoir site, and city subsequently repealed such ordinance, owners of land could not enjoin enforcement of repeal pending appeal from order setting aside sale of land to complainants.

5 How. 176-192, 12 L. 104, IN RE METZGER.

Syl. 3 (IV, 556). Habeas corpus in supreme court.

See 112 Am. St. Rep. 107, note.

5 How. 233-278, 12 L. 130, TAYLOR v. BENHAM.

Syl. 13 (IV, 564). Executor's sale of testator's trust lands.

Approved in Bay State Gas. Co. v. Rogers, 147 Fed. 560, where subject matter of suit consisted of certain gains and profits arising out of trust, fact that amount claimed could be liquidated in cash did not deprive federal equity court of jurisdiction.

5 How. 278-294, 12 L. 152, PHILLIPS v. PRESTON.

Syl. 5 (IV, 566). Parol to prove collateral agreement.

Approved in Sutton v. Weber, 127 Iowa, 367, 101 N. W. 778, where agreement reciting delivery of goods purports to be an agreement for an agency, without reference therein to terms of agency, parol evidence of contemporaneous oral agreement by which goods might be returned is admissible.

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0-440, 12 L. 213, FOX v. OHIO.

IV, 575). State counterfeiting laws valid.

Am. St. Rep. 153, note.

IV, 576). Amendments restrict federal power only.

d in St. Louis etc. Ry. Co. v. Davis, 132 Fed. 632, federal not enjoin officers of state from certifying assessment of roperty, because it is alleged that their action is in viola- th amendment; State v. Patterson, 134 N. C. 618, 47 S. E. ding Laws 1903, p. 472, c. 349, § 2, providing that any place to person shall ship any liquor for purpose of delivery to shall be construed to be place of sale; Territory v. Stroud, , 50 Pac. 267, upholding power of legislature to provide for ns by information.

1-504, 12 L. 226, WARING v. CLARKE.

IV, 581). Common-law remedy in federal court.

d in Bradford v. Territory, 1 Okl. 370, 34 Pac. 67, proceed- formation in nature of quo warranto is suit at common law stitutional provision as to jury trials.

.) Miscellaneous. Cited in The Sue, 137 Fed. 135, in ab- ocal law, there is no lien for repairs or supplies furnished ome port on order of owners.

504-633, 12 L. 256, LICENSE CASES (THURLOW v. ACHUSETTS; FLETCHER v. RHODE ISLAND; PIERCE W HAMPSHIRE).

IV, 589). Commerce—Regulation of liquor traffic.

d in State v. Durein, 70 Kan. 25, 26, 27, 28, 29, 80 Pac. upholding Laws 1881 p. 233 c. 128 prohibiting sale of in- liquors.

(IV, 591). Commerce regulated by police powers.

d in State v. Hyman, 98 Md. 615, 57 Atl. 9, 64 L. R. A. 637, act of 1902, regulating sweating system of workshops; Hart 7 Miss. 179, 39 So. 525, upholding Code 1892, § 1604, mak- demeanor to act as agent of either seller or purchaser in sale of liquor, as applied to one engaged in business in who took orders for whisky in Mississippi; Carty v. 78 Vt. 109, 62 Atl. 46, 2 L. R. A. (N. S.) 95, municipality g jail is not liable for negligence to one committed thereto xamination.

(IV, 592). License law—Absence of congressional action.

d in Harrell v. Speed, 113 Tenn. 230, 106 Am. St. Rep. 814, 841, one running bar on vessel, belonging to Arkansas , and plying between Arkansas and Tennessee, is liable cense for running bar while vessel is at Tennessee landing.

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Syl. 15 (IV, 595). Commerce—Validity of liquor license laws.

Approved in In re Heff, 197 U. S. 505, 49 L. 855, 25 Sup. Ct. 506, holding void 29 Stat., p. 506, c. 109, as applied to sale of liquor within a state to Indian to whom allotment made; State v. Frederickson, 101 Me. 46, 63 Atl. 539, upholding Rev. St., § 40, c. 29, prohibiting keeping and sale of liquors and declaring certain liquors to be intoxicating; Wallace v. Mayor etc. of Reno, 27 Nev. 82, 73 Pac. 531, 63 L. R. A. 337, upholding Act 1903 §§ 1, 3, incorporating city of Reno, empowering city board to revoke and discontinue business licenses; Burke v. Collins, 18 S. D. 194, 99 N. W. 1113, upholding Pol. Code, § 2839, providing that if principal of liquor license bond is known by commissioners to be unfit to conduct business they shall refuse to approve bond; Webster v. State, 110 Tenn. 505, 82 S. W. 182, upholding act prohibiting sale of liquor within four miles of institutions of learning.

VI HOWARD.

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6 How. 1-6, 12 L. 319, SIMS v. HUNDLEY.

(IV, 601.) Miscellaneous. Cited in Toledo Traction Co. v. Cameron, 137 Fed. 60, 69 C. C. A. 28, admitting testimony given on former trial where witness is without district and more than one hundred miles from place of trial; Schofield v. Palmer, 134 Fed. 755, certificate that notary sent notice of protest to indorser is not prima facie evidence of such fact.

6 How. 31-40, 12 L. 331, BANK OF UNITED STATES v. MOSS.

Syl. 1 (IV, 605). Federal jurisdiction—Notes—Citizenship.

Approved in Kolze v. Hoadley, 200 U. S. 83, 50 L. 381, 26 Sup. Ct. 220, applying principle to foreclosure of trust deed where bill also prayed cancellation of release of trust deeds to grantor, as in fraud of rights of complainant, who held deeds as collateral; Utah-Nevada Co. v. DeLamar, 133 Fed. 121, 66 C. C. A. 179, suit by assignee of oral contract to recover money due thereon is without jurisdiction of federal court unless it could have been maintained by assignor.

Syl. 4 (IV, 608). Amendment of judgment after term.

Approved in Ex parte Peeke, 144 Fed. 1020, where petitioner was found guilty on five counts of indictment under Rev. St., § 5440, each charging separate conspiracy, and was given single sentence of five years, such sentence is void as to excess over two years; King v. Davis, 137 Fed. 227, federal law court cannot vacate judgment of former term founded on false but apparently valid return of service of process; United States v. Four Lorgnette Holders, 132 Fed. 565, judgment of forfeiture against imported merchandise for attempt

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ıd customs laws cannot be vacated on petition filed after permit importer to defend on account of irregularities in); dissenting opinion, State v. Marsh, 134 N. C. 201, 47 S. E. R. A. 179, majority holding where, on appeal from convic- rape, it was reversed because indictment in record did not ime was committed against will, but it appeared such al- was omitted by misprision of clerk, supreme court, could n grant certiorari to correct record.

(IV, 609). Circuit court is of limited jurisdiction.

ed in Cobe v. Ricketts, 111 Mo. App. 113, 85 S. W. 133, ter suit to dissolve loan association had been brought in ourt, state court attempted to transfer similar suit to fed- t, which entered decree for sale of assets, such decree is terally attackable though it was held that order of trans- vas void.

4-62, 12 L. 337, STACY v. THRASHER.

(IV, 611). Privity defined.

ed in Harper v. Building Assn., 55 W. Va. 153, 46 S. E. hase of realty charged with usurious debt cannot defend ısury unless debtor unites with him in defense.

(IV, 612). Administrators from different states not privy.

ed in Coram v. Ingersoll, 148 Fed. 174, 175, where ancillary ator brings suit on chose in action properly deemed assets in his jurisdiction, judgment against him is conclusive ction by administrator of estate in another state.

06-114, 12 L. 363, UNITED STATES v. CURRY.

(IV, 618). Service on withdrawn attorney.

ed in Krieger v. Krieger, 221 Ill. 484, 77 N. E. 911, apply- to notice of dismissal of divorce suit; McInnes v. Sutton, 389, 77 Pac. 738, where, on denial of continuance, defend- nsel refused to participate in trial, but before judgment was or plaintiff defendant appeared by other counsel, and filed gainst signing or entering judgment, protest was in effect on for new trial.

63-190, 12 L. 387, SHELTON v. TIFFIN.

(IV, 623). Citizenship—Change of domicile—Suffrage.

ed in Jones v. Subera, 150 Fed. 464, one who left Washington one-half years prior to commencement of suit and thereafter n South Dakota, where suit was brought and described him- onveyances as resident of latter state, though unmarried and ıouse in Washington, to which state he intended returning, izen of Washington; In re Owings, 140 Fed. 740, bankruptcy ınot set off homestead in lands in another state to bankrupt, esident of North Carolina.

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Distinguished in Gaddie v. Mann, 147 Fed. 957, one who is native of South Carolina and votes there at national elections, and has home and family there, is citizen thereof, though he has business in Georgia and voted once there at primary.

Syl. 4 (IV, 624). Equitable relief against fraudulent judgment.

Approved in Spiker v. American Relief Society, 140 Mich. 226, 103 N. W. 612, foreign judgment may be attacked for want of jurisdiction unless transcript thereof affirmatively shows existence of court rendering same; Goldie Const. Co. v. Rich Const. Co., 112 Mo. App. 155, 86 S. W. 590, where justice's judgment against complainant was entered on stipulation signed by attorney purporting to appear for it, such judgment being valid on face, complainant could sue to restrain its enforcement on ground that it was void in fact.

6 How. 201-206, 12 L. 404, FORGAY v. CONRAD.

Syl. 7 (IV, 633). Final decrees only appealable.

Approved in Ex parte National Enameling etc. Co., 201 U. S. 160, 50 L. 708, 26 Sup. Ct. 404, complainant cannot cross-appeal from decree in patent suit where after granting injunction as to claims held valid, bill was dismissed as to claims held void.

Syl. 1 (IV, 628). Appeal—Joinder of defendants—Separate judgments.

Approved in Amadeo v. Northern Assur. Co., 201 U. S. 201, 50 L. 726, 26 Sup. Ct. 507, refusing to dismiss writ of error on death of insured, after judgment, where caption of declaration was amended to show action brought for use of specified party, and averment of assignment to such party was incorporated in body.

Syl. 3 (IV, 628). Appeal—Final decree—Account.

Approved in Cassett v. Mitchell Coal & Coke Co., 150 Fed. 34, order, in action against railroad for violation of interstate commerce act, requiring certain officers to produce before trial certain books containing information relative to rebates, is final and appealable; Scriven v. North, 134 Fed. 368, 67 C. C. A. 348, where bill in circuit court set up one cause of action for infringment of patent, another for infringement of trademark, and two for unfair competition, decree of dismissal as to first three is appealable; Chicago Wooden Ware Co. v. Miller Ladder Co., 133 Fed. 544, 66 C. C. A. 517, decree in infringement suit adjudging validity of certain claims and invalidity of others, and awarding injunction and damages, is final in sense that complainant may prosecute cross-appeal as to part adjudging claims invalid; Camp Phosphate Co. v. Anderson, 48 Fla. 236, 111 Am. St. Rep. 82, 37 So. 726, decree in partition ordering sale by commissioners based on report that partition cannot be made without prejudice, is final.

Distinguished in Ex parte National Enameling etc. Co., 201 U. S. 160, 163, 164, 50 L. 708, 709, 26 Sup. Ct. 404, complainant cannot cross-

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m decree in patent suit where, after granting injunction as held valid, bill was dismissed as to claim, held void.

IV, 631). Appeal—When decree not final.

d in Norris Safe & Lock Co. v. Manganese etc. Co., 150 Fed. order requiring party to pay into registry of court money session, which is subject of litigation, is interlocutory and able.

2-228, 12 L. 409, BANK OF METROPOLIS v. NEW ENG- BANK.

IV, 635). Paper sent to second bank for collection.

d in Winfield Nat. Bank v. McWilliams, 9 Okl. 502, 60 Pac. ving rule; Garrison v. Union Trust Co., 139 Mich. 402, 982, 70 L. R. A. 615, applying rule to draft sent for collec- inental Nat. Bank v. First Nat. Bank, 84 Miss. 110, 36 So. bank forwards check to correspondent under general blank it, and correspondent in turn sends it to third bank, which oceeds to correspondent's account without knowledge of solvency, it need not account to initial bank. See 111 Am. 26, 428, note.

8-260, 12 L. 425, BOWLING v. HARRISON.

IV, 640). Dishonor—Who is holder of bill.

d in Welch v. Kinney, 46 Or. 409, 80 Pac. 649, assigning nmittee of which maker is member does not discharge it.

IV, 641). When usage binding.

d in Chicago etc. Ry. Co. v. Linderman, 143 Fed. 949, where witnesses testify as to custom of uncoupling cars, and that ved this custom, and defendant's witnesses testify that they cars at same place during same time in another way, f existence of custom is not for jury.

9-284, 12 L. 437, UNITED STATES v. HODGE.

IV, 643). Surety not discharged by mortgage.

d in Providence Machine Co. v. Browning, 70 S. C. 155, 27, guarantor of payment of debt for which notes were to nd indorsed by guarantor not relieved by fact that time of xtended, because notes not given by debtor within reason-

1-344, 12 L. 447, PLANTERS' BANK v. SHARP.

IV, 647). Corporate charter as contract.

d in Greenville Nat. Bk. v. Evans-Snyder-Buell Co., 9 60 Pac. 253, chattel mortgage duly executed and filed in to laws of another state on property located therein is creditor attaching here after property bought here, though not filed in the county wherein property situated.

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Syl. 5 (IV, 649.) Contract cannot be impaired at all.

Approved in Smith v. Jennings, 67 S. C. 336, 45 S. E. 826, joint resolution requiring state treasurer to write off books, as obligations of state, certain past-due bonds, is not law impairing obligation of contracts.

Syl. 8 (IV, 651). Contracts—Laws impairing obligations.

Approved in Welsh v. Cross, 146 Cal. 627, 106 Am. St. Rep. 63, 81 Pac. 231, holding Code Civ. Proc., § 702, as amended in 1897, so as to extend time of redemption, does not apply to judgments existing at time of amendment.

6 How. 344-437, 12 L. 465, NEW JERSEY STEAM NAVIGATION CO. v. MERCHANTS' BANK.

Syl. 3 (IV, 652). Action by principal against agent's carrier.

Approved in In re Weisenberg, 131 Fed. 521, parol evidence is admissible to show that joint notes signed by members of partnership are in fact firm debts; American Express Co. v. Ogles, 36 Tex. Civ. 410, 81 S. W. 1025, where express company obtained train from railroad to ship stock, no passengers being carried, except owners of stock, and employee's shipment being in charge of express company, though train operated by railroad men, express company is liable for railroad's negligence.

Syl. 5 (IV, 655). Carriers—Limitation of liability by contract.

Approved in Baltimore etc. R. R. Co. v. Hubbard, 72 Ohio St. 316, 74 N. E. 218, upholding contract for shipment of stock limiting liability in consideration of special rate.

Distinguished in Chesapeake etc. Ry. Co. v. Beasley, 104 Va. 793, 52 S. E. 567, 3 L. R. A. (N. S.) 183, Code 1887, § 1296, prohibits carrier from making contracts limiting liability.

Syl. 6 (IV, 657). Carrier must perform public duties.

Approved in Donovan v. Pennsylvania Co., 199 U. S. 292, 50 L. 199, 26 Sup. Ct. 91, railroad may exclude all hackmen, excepting those under contract to it, from depot grounds; Olanta Coal Min. Co. v. Beech Creek R. Co., 144 Fed. 151, owner of coal-mining property adjoining railroad right of way, is entitled as of right to connect switch-tracks built on own land with track of such road to facilitate shipping of coal; Russell v. Erie R. R. Co., 70 N. J. L. 816, 59 Atl. 153, 67 L. R. A. 403, where owner of goods held in storage directed storage company to send them to him by railroad, and officer of storage company sent goods by drayman to station, accompanied by completed shipping order, railroad agent could not assume drayman had authority to alter terms of order; N. Y. Cement Co. v. Consolidated etc. Cement Co., 178 N. Y. 177, 70 N. E. 453, construing Laws 1899, p. 958, c. 469, authorizing lease of canal, and holding part of canal to be public highway; North Carolina Corp. Com. v. Atlantic Coast Line R. Co. (Railroad Connection Case), 137 N. C. 15, 49 S. E. 196, uphold-

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1899, pp. 291, 304, giving corporation commissioner power to ilroad to make reasonable connection with trains of other .

IV, 659). Carrier's stipulation for immunity for negligence.

ed in Cau v. Texas etc. Ry. Co., 194 U. S. 431, 48 L. 1056, Ct. 663, exemption of carrier from liability for damages fire, expressed in bill of lading, is valid, though option to r common-law liability not presented to shipper; Arthur v. . Ry. Co., 139 Fed. 130, where shipper accepted bill of transportation of cotton containing fire exemption clause, equesting rate at which carrier would ship under common- ty contract, carrier not liable for loss by fire not due to its .

7-550, 12 L. 535, WEST RIVER BRIDGE CO. v. DIX.

IV, 671). Condemnation of corporation's bridge.

ed in Pittsburgh etc. Ry. Co. v. Wolcott, 162 Ind. 405, 69 upholding Burns' Rev. St., 1901, §§ 4404-4410, relating to f streets on notice to owner of property appropriated, and hearing and requiring report to certain tribunal, as well ent and tender of damages to owner.

IV, 675). Corporate charter is contract.

Town of Nahant v. United States, 136 Fed. 280, 69 L. R. C. C. A. 641, arguendo.

IV, 675). Eminent domain paramount to private rights.

ed in Spencer v. Seaboard Air Line R. Co., 137 N. C. 122, 102, upholding Priv. Laws 1901, p. 463, c. 168, empowering f stockholders of certain railways to consolidate with other , and providing for assessing and paying value of dis- ock.

0-605, 12 L. 553, PATTERSON v. GAINES.

IV, 678). Marriage presumes legitimacy of issue.

ed in Bowman v. Little, 101 Md. 288, 61 Atl. 225, where ent of plaintiff's claim to be widow of deceased would in- ubsequent marriage and bastardize issue thereof, such ante- rriage must be established as actual fact by strict proof; erritory, 8 Okl. 82, 56 Pac. 855, applying rule in bastardy .

(IV, 680). Law governing right to sue.

Am. St. Rep. 462, note.

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VII HOWARD.

7 How. 1-88, 12 L. 581, LUTHER v. BORDEN.

Syl. 3 (IV, 683). Political questions not reviewable.

Approved in Moyer v. Peabody, 148 Fed. 875, whether or not state of insurrection exists in locality requiring use of military of state is question to be determined by executive, whose decision is not reviewable by courts; Anthony v. Burrow, 129 Fed. 790, equity court has no jurisdiction to enjoin state officers, acting under state statute, from issuing certificate of nomination to candidate for Congress; dissenting opinion in Rice v. Palmer, 78 Ark. 463, 96 S. W. 407, majority holding canvass of returns on constitutional amendment by legislature is reviewable by courts.

Distinguished in Knight v. Shelton, 134 Fed. 440, fact that speaker of state House of Representatives declared proposed state constitutional amendment legally adopted on canvass of vote is not conclusive on federal court in absence of state statute; Rice v. Palmer, 78 Ark. 445, 96 S. W. 400, canvass of returns on constitutional amendment by legislature is reviewable by courts; Kadderly v. Portland, 44 Or. 134, 74 Pac. 716, whether amendment to constitution has been regularly proposed, adopted and ratified is question for courts and not political department.

Syl. 12 (IV, 687). Republican form of government guaranteed.

Approved in Territory v. Stroud, 6 Okl. 110, 50 Pac. 266, upholding enactments providing for prosecution of misdemeanors by information without preliminary examination.

Syl. 13 (IV, 687). Suppression of insurrection by militia.

See 98 Am. St. Rep. 773, note.

Syl. 15 (IV, 689). Discretion in use of military power.

See 98 Am. St. Rep. 775, note.

7 How. 89-132, 12 L. 618, WILKES v. DINSMAN.

Syl. 3 (IV, 690). Marines are in navy.

Distinguished in McCalla v. Facer, 144 Fed. 63, enlistment of minors in marine corps is governed by statutory provisions relating to army enlistments.

7 How. 132-160, 12 L. 637, PATTON v. TAYLOE.

Syl. 2 (IV, 692). Vendee's remedy on failure of title.

Denied in Williams v. Neely, 134 Fed. 9, 69 L. R. A. 232, 67 C. C. A. 171, partial failure of consideration which results from defect of

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ood defense pro tanto to action by vendor on note given
ase price of land which vendor has conveyed with covenants
ncumbrances.

85-198, 12 L. 660, UNITED STATES v. CHICAGO.

(IV, 697). Eminent domain—Land owned by government.

ed in Hollister v. State, 9 Idaho, 15, 71 Pac. 543, Idaho
act does not prohibit or restrict right of eminent domain
ls granted to state by said act.

(IV, 697), Dedication of streets.

ed in Evans v. Blankenship, 4 Ariz. 315, 39 Pac. 813, where
grantor platted land, and on map thereof tract thereof was
s park and lots sold with reference to map, though grantor
offered land in suit to state for capitol site, its dedication
s public square was complete; Riverside v. MacLain, 210
02 Am. St. Rep. 164, 71 N. E. 414, 66 L. R. A. 288, where
been dedicated a park, and accepted as such, village cannot
use portion of park for public highway.

98-220, 12 L. 666, SMITH v. KERNOCHEN.

(IV, 698). Federal suit by assignee of mortgage.

ed in Blair v. Chicago, 201 U. S. 449, 50 L. 821, 26 Sup.
motive with which creditor invokes jurisdiction of federal
nmaterial, if he has a justifiable demand and requisite diver-
tizenship exists.

(IV, 700). Judgment as res adjudicata.

ed in Kittel v. Trustees etc. Improvement Fund, 139 Fed.
e Florida internal improvement trustees have been joined
osure of mortgage given by railroad, and among other
vered by mortgage was certificate from trustees reciting
nal act relating to swamp lands, and its acceptance by
act creating board and state act making grant in aid of
trustees are estopped from denying title; Georgia etc. Co. v.
32 Fed. 917, Georgia supreme court decision in suit between
corporation that charter precluded tax in excess of certain
sion concludes state in subsequent suit for taxes of different
nder different statute; Territory v. Hopkins, 9 Okl. 150, 59
where court of competent jurisdiction has determined valid-
ds involved in proceeding provided by statute, decree is con-

34-260, 12 L. 681. WAGNER v. BAIRD.

(IV, 703). Laches—Equity follows limitation statutes.

ed in Williams v. Neely, 134 Fed. 13, 69 L. R. A. 232, 67
171, it is not culpable laches for one who has defense of
to note which is in litigation in another court to wait till

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an affirmative action at law on subject of defense is barred, and until equitable defense is barred in action on note, to enjoin prosecution of latter action until his defense is allowed; Patterson v. Hewitt, 11 N. M. 42, 66 Pac. 564, 55 L. R. A. 658, applying rule to bill to enforce rights arising under verbal agreement relating to mining locations.

7 How. 283-573, 12 L. 702, PASSENGER CASES (SMITH v. TURNER; NORRIS v. BOSTON).

Syl. 1 (IV, 709). State tax on alien passengers.

Distinguished in dissenting opinion in Pabst Brewing Co. v. Crenshaw, 198 U. S. 41, 49 L. 935, 25 Sup. Ct. 552, majority upholding Missouri inspection law, subjecting all intoxicating liquors arriving in state to operation of law.

Syl. 3 (IV, 715). State control of interstate traffic.

Affirmed in Southern Ry. Co. v. Greensboro etc. Co., 134 Fed. 91, carloads of coal shipped from one state into another are not subject to order of state railroad commission directing railroad to place cars on certain track for unloading, as requested by consignee.

Distinguished in dissenting opinion, Allen v. Reed, 10 Okl. 157, 13 Pac. 877, majority holding void Stat. 1893, c. 23, relating to changing of county seats.

Syl. 4 (IV, 716). Interstate commerce regulations by states.

Approved in Old Dominion S. S. Co. v. Virginia, 198 U. S. 306, 49 L. 1062, 25 Sup. Ct. 686, vessels, which though engaged in interstate commerce, are employed in such commerce wholly within limits of state, are taxable there though registered under United States statutes in port of another state; Southern Ry. Co. v. Greensboro etc. Co., 134 Fed. 92, carloads of coal shipped from one state to another are not subject to order of state commission directing railroad to place cars on certain track for unloading as requested by consignee; Louisville v. Wehmhoff, 116 Ky. 830, 76 S. W. 881, upholding Louisville anti-poolroom ordinances.

7 How. 573-586, 12 L. 824, TYLER v. HAND.

Syl. 1 (IV, 717). When general or special demurrer proper.

Approved in Emmons v. National etc. Assn., 135 Fed. 692, 68 C. C. A. 327, applying rule to defense of multifariousness in bill by borrowing stockholder in loan association to cancel contract for fraud.

Syl. 3 (IV, 718). Estoppel to deny validity of voluntary bonds.

Approved in American Sen. Co. v. Campbell & Zell Co., 138 Fed. 533, where attachment bond was executed to receiver of corporation, his successors and assigns, corporation could, on termination of receivership, prosecute action on bond.

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uished in Commissioners of Logan Co. v. Harvey, 6 Okl. 'ac. 403, official bond exacted where no bond is required, as precedent to officers being allowed to enter into and dis- ıties of office, is void.

86-594, 12 L. 829, KENNEDY v. HUNT.

(IV, 719). Congressional act recognizing land grant.

ed in Catron v. Laughlin, 11 N. M. 626, 72 Pac. 30, where ico had declared Mexican grant valid and recommended its ion without limitation as to quantity, and Congress con- ant as recommended, confirmation is congressional declara- validity of title.

12-626, 12 L. 841, PECK v. JENNESS.

(IV, 721). Federal question—Decision against federal right.

ed in Rector v. City Deposit Bank Co., 200 U. S. 411, 50 L. up. Ct. 289, judgment dismissing suit brought by bankruptcy recover alleged asset of bankrupt estate presents federal

(IV, 723). Bankruptcy as bar to attachment liens.

ed in Klipstein v. Allen-Miles Co., 136 Fed. 390, 69 C. C. A. r Georgia code no judgment will be rendered against de- who has been discharged from debt sued on in bankruptcy gs pending garnishment for purpose of charging sureties on discharge garnishment.

(IV, 724). Collateral attack on judgments.

ed in Linstroth Wagon Co. v. Ballew, 149 Fed. 966, where, nvoluntary petition, claimant sued in state court to recover ersonalty, and obtained sequestration, and on bankruptcy gs being instituted trustee intervened and lost suit, decree as conclusive on trustee; Miller & Lux v. Rickey, 146 Fed. e federal court has first acquired jurisdiction of suit to de- espective rights of appropriators of water, it will enjoin later relating to same subject matter.

(IV, 725). Interference with concurrent jurisdiction.

ed in Tennessee Produce Marble Co. v. Grant, 135 Fed. 323, A. 676, bankruptcy court has no jurisdiction to stay state reditor and to restrain creditor from proceeding to enforce ıt lien under state court where state court had acquired prior on; Hurlbutt v. Brown, 72 N. H. 236, 55 Atl. 1047, Bankr. 1, §§ 60a, 60b, does not destroy lien of attachment obtained n four months prior to filing bankruptcy petition, though itor and debtor knew at time of attachment that debtor was Beardslee v. Ingraham, 183 N. Y. 417-424, 76 N. E. 477- e, after federal court attachment on corporate property, there uit brought to dissolve corporation and receiver appointed to

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sell property, state court cannot enjoin marshal from selling property under execution.

Distinguished in Shaw v. Frey, 69 N. J. Eq. 324, 59 Atl. 812, state court may restrain prosecution of action in federal court pending discovery of matters necessary to fair trial.

Syl. 10 (IV, 728). Injunction against state court suits.

Approved in Security Trust Co. v. Union Trust Co., 134 Fed. 302, where state court has appointed receiver in railroad foreclosure and directed sale, and had power to grant complainants' relief with reference to rolling stock on which they claimed lien, federal court cannot enforce lien.

7 How. 627-646, 12 L. 847, SHAWAN v. WHERRITT.

Syl. 3 (IV, 731). Conclusiveness of bankruptcy decree.

Approved in Silvey v. Tift, 123 Ga. 808, 51 S. E. 750, 1 L. R. A. (N. S.) 386, where petition for involuntary bankruptcy alleged fraudulent preference, adjudication does not estop creditor from setting up in suit by trustee that on sale he relied on representations of bankrupt but that on discovering their falsity they rescinded sale.

7 How. 650-658, 12 L. 857, BARNARD v. GIBSON.

Syl. 2 (IV, 732). Final decree—Enjoining infringement and reference.

Approved in Ex parte National Enameling etc. Co., 201 U. S. 160, 50 L. 708, 26 Sup. Ct. 404, denying cross-appeal by complainant from decree in patent suit which granted injunction as to claims held valid and sending cause to master for accounting, dismissed bill as to claims held invalid; Australian Knitting Co. v. Gormly, 138 Fed. 103, decree of circuit court sustaining validity of patent and awarding injunction and referring case to master for accounting is interlocutory and not conclusive as to validity of patent in subsequent suit prior to rendition of final decree.

7 How. 681-693, 12 L. 870, JONES v. UNITED STATES.

Syl. 2 (IV, 735). Direction of application of payments.

Approved in Wardlaw v. Troy Oil Mill, 74 S. C. 371, 54 S. E. 659, where manufacturer sells brick to be used in erection of building and without notice to manufacturer part of brick is sold, manufacturer may apply payments made on account by purchaser to unsecured part of purchase price.

Syl. 3 (IV, 736). Liability on official bonds.

Approved in First Nat. Bank v. National Surety Co., 130 Fed. 406, 408, 409, 66 L. R. A. 777, applying principle where surety company indemnified bank against loss through dishonest employees, and bookkeeper falsified accounts of depositor but prior to bookkeeper's discharge deposits exceeded checks drawn.

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29-738, 12 L. 890, CUTLER v. RAE.

(IV, 740). Consent gives no jurisdiction.

ed in Henrie v. Henderson, 145 Fed. 319, applying rule to rom decree in bankruptcy proceedings restraining sale by

(IV, 740). Maritime lien follows proceeds.

ed in Bank of British N. A. v. Freights etc. of Hutton, 137 70 C. C. A. 118, where bank has maritime lien on freight for , it could enforce same in rem in admiralty though it had lien ole in equity.

(IV, 742). Admiralty—Action for contribution.

ed in Portland etc. Mills Co. v. Portland etc. S. S. Co., 145 where shipper of flour was bound for freight only as surety gnees who were its owners, and on vessel being abandoned rs who salved part of cargo, and subsequently insurer of ecovered same from shipper, latter has no claim to proceeds ge by right of subrogation.

60-768, 12 L. 903, MASSINGILL v. DOWNS.

(IV, 745). Remedial retrospective laws valid.

ed in King v. Davis, 137 Fed. 241, Va. Code 1904, p. 1903, memoranda of lis pendens to be recorded to bind bona fide r does not apply to federal courts.

776-784, 12 L. 909, LEWIS v. LEWIS.

(IV, 746). Limitation statutes—Repeal of saving clause.

ed in Lamb v. Powder Riv. etc. Co., 132 Fed. 438, 67 L. R. 5 C. C. A. 570, applying rule in construing Colo. Act of 1895, led in 1899, relating to limitation of actions on foreign judg- Huber v. Zimmerman, 8 Okl. 575, 58 Pac. 738, construing of limitation and holding note sued on not barred. See 111 Rep. 461, note.

785-797, 12 L. 914, LAWRENCE v. ALLEN.

(IV, 747). Tariff—When article manufactured.

ved in Queen Ins. Co. v. Excelsior Milling Co., 69 Kan. 118, 425, mining plant is not "manufacturing establishment" lause of policy forfeiting insurance if property was such; g opinion in Benedict v. Davidson County, 110 Tenn. 193, 67 9, majority holding logs grown on soil of state when in hands en are articles manufactured from produce of state within ional tax exemption clause.

798-812, 12 L. 919, BACKUS v. GOULD.

(IV, 748). Copyright—Penalty for each sheet.

ved in Walker v. Globe Newspaper Co., 140 Fed. 308, upholdt to sue at law for damages for infringement of copyright.

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Syl. 2 (IV, 748). Copyright—Forfeiture of infringing books.

Approved in Walker v. Globe Newspaper Co., 130 Fed. 595, action at law for damages does not lie for infringement of copyright.

Distinguished in Walker v. Globe Newspaper Co., 140 Fed. 313, reversing 130 Fed. 595, upholding right to sue at law for damages for infringement of copyright.

7 How. 819-832, 12 L. 928, STEARNS v. PAGE.

Syl. 3 (IV, 751). Allegations refuting laches.

Approved in Cole v. Birmingham Union Ry. Co., 143 Ala. 434, 39 So. 405, suit by stockholder of street railroad to set aside, on ground of ultra vires, sale of property for shares of stock in vendee, is barred when brought ten years after sale and two years after knowledge, property having been sold to third party.

7 How. 833-894, 12 L. 934, UNITED STATES v. KING.

Syl. 2 (IV, 752). Error brings up law questions only.

Approved in Streeter v. Sanitary Dist. of Chicago, 133 Fed. 131, 66 C. C. A. 190, on trial to court improper admission of evidence is not of itself ground for reversal.

VIII HOWARD.

8 How. 41-48, 12 L. 979, UNITED STATES v. STAATS.

Syl. 2 (IV, 756). Indictment—Intent to defraud feloniously.

Approved in Bridgeman v. United States, 140 Fed. 586, indictment under Rev. St., § 5438, charging that defendant, for purpose of obtaining approval of claim against United States, used false voucher, knowing same to be false, need not allege to whom voucher was presented nor manner of its use; United States v. Lake, 129 Fed. 501, indictment against president of bankrupt corporation for making false oath to its schedules need not expressly aver materiality of false statements.

Syl. 3 (IV, 757). False writing to defraud government.

Approved in Dolan v. United States, 133 Fed. 451, false certificate of citizenship within Rev. St., §§ 5425, 5427, includes one which is false in its recital of facts.

8 How. 73-83, 12 L. 992, NATHAN v. STATE OF LOUISIANA.

Syl. 1 (IV, 758). Traffic in foreign drafts not commerce.

See 112 Am. St. Rep. 651, note.

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83-107, 12 L. 997, UNITED STATES v. BUCHANAN.

(IV, 761). Binding effect of custom.

ed in Chicago etc. Ry. Co. v. Lindeman, 143 Fed. 949, evidence as to uniformity of custom of dropping cars at point insufficient.

113-123, 12 L. 1009, UNITED STATES v. BOISDORES.

(IV, 765). Jurisdiction falls with repeal of statute.

ed in United States v. Sena, 12 N. M. 414, 78 Pac. 62, Laws 1901, p. 190, c. 99, deprived supreme court of juris- ver criminal appeals not applied for during term at which gment rendered.

34-163, 12 L. 1018, VEAZIE v. WILLIAMS.

(IV, 766). Auctions—Puffing avoids sale.

ed in Rowley v. D'Arcy, 184 Mass. 554, 69 N. E. 326, 64 . 190, where certain creditors attended assignees' sale of property and combined to puff price by fictitious bids, litors, as between themselves, could not stipulate for im- from any risk of being held personally liable for their assignee.

163-169, 12 L. 1030. PHALEN v. VIRGINIA.

(IV, 768). Police power—Suppression of nuisances.

ed in Reaves v. Territory, 13 Okl. 405, 74 Pac. 953, en- naintenance of disorderly and disreputable theater where ble characters congregate.

170-183, 12 L. 1033, McCLANAHAN v. DAVIS.

(IV, 769). Discovery—Defendant must have interest.

ed in Bowdish v. Metzger, 71 Kan. 754, 81 Pac. 484, tition in suit to quiet title is sufficient, except that it does d defendant's title, but states that nature or extent of e is unknown and prays defendant be required to dis- it is sufficient for discovery and relief.

183-210, 12 L. 1040, TAYLOR v. TAYLOR.

(IV, 769). Equity—Protection against undue influence.

ed in Shevlin v. Shevlin, 96 Minn. 409, 413, 105 N. W. applying principle in suit to set aside transfer of stock brother.

(IV, 769). Setting aside deed for child to parent.

ed in Shevlin v. Shevlin, 96 Minn. 413, 105 N. W. 263, principle in suit to set aside transfer of stock made to

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8 How. 210-223, 12 L. 1051, MAXWELL v. KENNEDY.

Syl. 2 (IV, 771). Demurrer to bill for laches.

Approved in Thurmond v. Chesapeake etc. Ry. Co., 140 Fed. 699, applying rule to enforce specific performance of contract by which railroad agreed to locate station on land of complainant.

8 How. 251-256, 12 L. 1067, LORD v. VEAZIE.

Syl. 2 (IV, 774). Judgment in fictitious suit is void.

Approved in Ridge v. Manker, 132 Fed. 601, 67 C. C. A. 596, decree against receiver of another court canceling mortgage is not nullity which may be so declared in collateral proceeding merely because record did not show affirmatively that permission to bring suit obtained; Kalbfell v. Wood, 193 Mo. 690, 92 S. W. 234, denying prohibition to prevent election commissioners from selecting primary election officers where primary held before provisional order made returnable.

Distinguished in Succession of Dauphin (Choppin v. Dauphin), 112 La. 134, 36 L. 298, deciding compromise judgment res adjudicata on question of succession.

8 How. 293-316, 12 L. 1085, MENARD'S HEIRS v. MASSEY.

Syl. 7 (IV, 779). Survey necessary to validity of grant.

Approved in Territory v. Delinquent Taxpayers, 12 N. M. 172, 175, 76 Pac. 317, 318, title to imperfect grant does not pass out of United States on decree of court of private land claims and land not taxable until confirmation by that court of survey.

8 How. 366-384, 12 L. 1115, CALDWELL v. UNITED STATES.

Syl. 3 (IV, 784). Nature of forfeiture under revenue laws.

Approved in United States v. One Dark Bay Horse, 130 Fed. 241, where horse imported without payment of duty had been owned by claimant for more than five years without suspicion of its importation, proceedings for forfeiture barred.

8 How. 384-402, 12 L. 1123, GIBSON v. STEVENS.

Syl. 1 (IV, 785). Sales—Symbolical delivery sufficient.

Approved in National Newark Banking Co. v. Delaware etc. R. Co., 70 N. J. L. 777, 103 Am. St. Rep. 825, 58 Atl. 312, 66 L. R. A. 595, applying rule where orders for delivery of grain consigned were delivered.

Syl. 3 (IV, 786). Assignment of warehouse receipts—Title.

Approved in Union Trust Co. v. Wilson, 198 U. S. 539, 49 L. 1157, 25 Sup. Ct. 766, indorsement to third person, as security of warehouse receipt reciting that goods are deliverable only on surrender of receipt properly indorsed, is sufficient delivery as against attachment. See 105 Am. St. Rep. 369, note.

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41-450, 12 L. 1147, SHELDON v. SILL.

(IV, 793). Statutory court's jurisdiction limited.

ed in Kentucky v. Powers, 201 U. S. 24, 50 L. 644, 26 Sup. lenial, in summoning or impaneling jurors in criminal case rights secured by federal law, does not give right of re- nited States v. Barrett, 135 Fed. 194, denying federal ju- of action in bond of contractor for government work Stat. 278, c. 280, in name of United States for use of an.

(IV, 794). Federal jurisdiction—Suits by assignee.

ed in Gorman-Wright Co. v. Wright, 134 Fed. 365, 67 C. C. ledgee of stock cannot, on account of diverse citizenship ex- tween himself and corporation, sue corporation in federal appointment of receiver where pledgor is resident of state corporation is citizen.

(IV, 794). Citizenship—Federal foreclosure by assignee.

ed in Kolze v. Hoadley, 200 U. S. 83, 50 L. 381, 26 Sup. applying rule to suit to foreclose trust deed; Utah-Nevada Lamar, 133 Fed. 121, 66 C. C. A. 179, suit by assignee of ract to recover money due thereon is without federal juris- nless assignor could have maintained it.

51-470, 12 L. 1151, LE ROY v. BEARD.

(IV, 795). Law governing procedure.

ed in Clark v. Eltinge, 38 Wash. 383, 107 Am. St. Rep. 858, 559, married woman is entitled only to such exemptions as provided by state where she is sued and resides.

470-489, 12 L. 1160, PRENTICE v. ZANE.

(IV, 797). Appeal—Presumptions as to facts.

ed in Coulter v. B. F. Thompson Lumber Co., 142 Fed. olding refusal to instruct as to which of two classes of on issue of fact should be preferred; J. W. Bishop Co. rse, 141 Fed. 648, appellate court cannot review questions r determine weight to be given to evidence.

90-494, 12 L. 1168, MAGER v. GRIMA.

(IV, 798). State tax on alien heirs or legatees.

ed in Blair v. Herold, 150 Fed. 201, where testator, his others formed partnership which was not to be dissolved as three survived, and it was stipulated that on testator's s interest should go to son in consideration of valuable tions received from others, son's interest acquired from t taxable under War Revenue Act, c. 448; Humphreys v. Ohio St. 83, 101 Am. St. Rep. 888, 70 N. E. 961, 65 L. R.

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A. 776, devise to incorporated charitable society is subject to collateral inheritance tax.

Distinguished in Gilbertson v. Oliver, 129 Iowa, 573, 105 N. W. 1004, indebtedness to nonresident having no agent in state is not liable to inheritance under Code, § 1467.

8 How. 495-565, 12 L. 1170, WILLIAMSON v. BERRY.

Syl. 3 (IV, 799). Inquiry into jurisdiction—Action on judgment.

Approved in Southern Pine L. Co. v. Ward, 16 Okl. 158, 85 Pac. 467, where on foreclosure of trust deed defendant pleads title under prior judgment of same court, codefendant may, by cross-petition, show want of jurisdiction over suit in which such judgment rendered.

Syl. 11 (IV, 802). Judicial sale defined.

Approved in Blitz v. Moran, 17 Colo. App. 257, 67 Pac. 1021, sheriff being only officer authorized to sell on foreclosure, appointment of commissioner therefor is invalid.

Syl. 13 (IV, 803). Sale by trustee under special power.

Cited in dissenting opinion in Metcalfe v. Union Trust Co., 181 N. Y. 54, 73 N. E. 503, reciting history of litigation.

Syl. 16 (IV, 803). Following state statutory construction.

Cited in Bramblet v. Davis, 141 Fed. 784, arguendo.

8 How. 569-586, 12 L. 1201, MILLS v. ST. CLAIR COUNTY.

Syl. 3 (IV, 804). Ambiguous grant construed against grantee.

Approved in Knoxville Water Co. v. Knoxville, 200 U. S. 34, 50 L. 359, note, 26 Sup. Ct. 224, municipal grant of waterwork's franchise does not impliedly devest city of power to construct its own system.

Syl. 4 (IV, 805). Establishment of ferries controlled by government.

Approved in Green v. Ivey, 45 Fla. 349, 33 So. 714, refusing to enjoin attempt to acquire ferry privilege near same point as complainant's.

8 How. 586-614, 12 L. 1209, KENNEDY v. GEORGIA STATE BANK.

Syl. 1 (IV, 805). Scope of bill of review.

Approved in Chicago etc. Door Co. v. Chicago etc. R. Co., 137 Fed. 103, where defendant, pending suit for infringement of patent, begins use of another infringing device, question of second infringement may be brought in by supplemental bill.

Syl. 2 (IV, 806). Time for bill of review.

Approved in Jorgensen v. Young, 136 Fed. 381, 69 C. C. A. 222, bill of review in equity not filed till more than two years after

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t in original suit entered, and until after time to appeal ired, is too late.

(IV, 806). Supplemental bill to bring in parties.

ved in Brown v. Fletcher, 140 Fed. 642, where, after death lainant in equity in federal court, no steps are taken by tatives within reasonable time to revive suit, court may motion by defendant to dismiss for want of prosecution.

(IV, 806). Amendment of record in supreme court.

ved in Fred Macey Co. v. Macey, 135 Fed. 729, 68 C. C. A. using leave to amend bill to show citizenship of members lainant association; Kansas City etc. Ry. Co. v. Prunty, 133 66 C. C. A. 163, permitting amendment of removal peti- supplying averment of citizenship where omission was in- nt.

IX HOWARD.

10-34, 13 L. 25, IRWIN v. DIXON.

(IV, 808). Public nuisance—Remedy of individual.

ved in West & Severns v. Ponca City Milling Co., 14 Okl. Pac. 101, refusing injunction at instance of private in- from completing frame building within fire limits.

(IV, 810). Injunction against public nuisance—Individual.

ved in Chessman v. Hale, 31 Mont. 589, 79 Pac. 257, plain- ction for damages for maintenance of nuisance is entitled trial of right to damages, though he also asks for injunction.

(IV, 813). Dedication of highway by prescription.

ved in Loomis v. Connecticut etc. Co., 78 Conn. 162, 61 , where owners of land opened same to public as approach place of business and stated to street commissioner that always be so open, and that for such privilege city should iize strip, there was dedication; Columbia etc. R. R. Co. le, 33 Wash. 522, 74 Pac. 673, where plaintiff occupied piles and planking and used same as approach to its depot, portion of track by public by plaintiff's permission to gain o depot not dedication.

34-54, 13 L. 36, WALDEN v. BODLEY.

(IV, 814). Purchasers pendente lite.

ved in Moulton v. Kolodzik, 97 Minn. 425, 107 N. W. 155, nder unrecorded contract of sale of land may recover pay-

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ments where before conveyance lis pendens in foreclosure of mortgage is filed.

Distinguished in King v. Davis, 137 Fed. 240, Va. Code 1904, p. 1903, relating to lis pendens, does not apply to federal courts.

9 How. 55-83, 13 L. 44, WHEELER v. SMITH.

Syl. 3 (IV, 816). Charitable bequests—Uncertainty of beneficiaries.

Approved in Minot v. Attorney General, 189 Mass. 181, 75 N. E. 151, where charitable trust of residue of testator's estate, attempted to be created, was void for indefiniteness of beneficiaries, resulting trust of residue decreed in favor of next of kin.

Syl. 4 (IV, 817). Equitable relief against duress.

Approved in Morrison v. Morrison, 101 Me. 133, 63 Atl. 393, arguendo.

9 How. 83-109, 13 L. 56, UNITED STATES v. PRICE.

Syl. 5 (IV, 821). Joint judgment on joint and several bond.

Approved in Blythe v. Cordingly, 20 Colo. App. 515, 80 Pac. 498, judgment rendered on firm debt, where service is had upon less than all of partners, is merger of obligation and bar to subsequent action against partners not served.

9 How. 109, 126, 13 L. 66, WILSON v. SIMPSON.

Syl. 1 (IV, 821). Patents—Right to rebuild.

Approved in Wagner Typewriter Co. v. Webster Co., 144 Fed. 409, owner of typewriter equipped with patented ribbon mechanism may replace both spool and ribbon as matter of repairs.

Syl. 3 (IV, 822). Repair of patented article.

Approved in Wagner Typewriter Co. v. Webster Co., 144 Fed. 412, 415, owner of typewriter equipped with patented ribbon mechanism may replace both spool and ribbon as matter of repairs; Morrin v. Robert etc. Works, 138 Fed. 73, 77, holding refitting new tubes in steam generator was reconstruction and infringement; American Bonding Co. v. City of Ottumwa, 137 Fed. 579, 70 C. C. A. 270, construing paving contract with reference to clause as to keeping in repair.

9 How. 172-196, 13 L. 92, PERRINE v. CHESAPEAKE & DELAWARE CANAL CO.

Syl. 7 (IV, 830). Construction of ambiguous public grants.

Approved in Blair v. Chicago, 201 U. S. 472, 50 L. 831, 26 Sup Ct. 427, construing Ill. Act 1865, relating to Chicago street railway franchises; dissenting opinion in Canton v. Cotton Warehouse Co., 84 Miss. 313, 105 Am. St. Rep. 428, 36 So. 279, 65 L. R. A. 561,

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holding power given to railroad to do all acts incidental
nance of road includes right to lay conduits in right of
onduct water to buildings, though right of way traverse
ts.

13-235, 13 L. 109, WITHERS v. GREENE.

(IV, 833). Failure of consideration for fraud.

ed in Richardson v. Lowe, 149 Fed. 632, though fraud in-
rchase of mines has been waived by laches as ground for
of contract, purchaser may plead resulting damages as
consideration in defense of purchase money note; Williams
134 Fed. 7, 69 L. R. A. 232, 67 C. C. A. 171, partial failure
eration resulting from defect of title is good defense pro
action by vendor on purchase money note where vendor
nanted against encumbrances.

35-248, 13 L. 119, BENNER v. PORTER.

(IV, 836). Jurisdiction of territorial courts.

ed in United States v. Winans, 198 U. S. 383, 49 L. 1093,
t. 662, fishing rights in Columbia river, secured to Yakima
y treaty of 1859, which provided for extingnishment of title
occupied by Indians preparatory to opening lands for set-
are not subordinate to powers acquired by Washington
e lands on its admission; Ex parte Moran, 144 Fed. 598,
jurisdiction of circuit court of appeals to issue habeas
inquire into power of Oklahoma court's power to im-
rson convicted of capital crime; Wallace v. Adams, 143
determining jurisdiction of United States courts in Indian
over ejectment by Indian allottee against one in posses-
llotment; Haines Wharf Co. v. Dalton, 1 Alaska, 555, up-
1 Stat. 321, c. 786, imposing license upon transfer com-
d other businesses carried on in Alaska; Welty v. United
Okl. 15, 76 Pac. 123, territorial court in trial of federal
governed by territorial procedure; Pitts v. Logan County,
3, 41 Pac. 592, clerks of territorial district courts being
to account to Secretary of Treasury for fees, territorial leg-
ct attempting to regulate same is void; Kneeland v. Koeter,
363, 82 Pac. 609, 1 L. R. A. (N. S.) 745, where tide lands
lace limits of Northern Pacific grant in Washington had
veyed and defined and conditions performed prior to ad-
f state, railroad and grantees were entitled to land, though
t issued till after adoption of constitution.

(IV, 837). Territorial court's jurisdiction on admission.

n Allen v. Myers, 1 Alaska, 118, arguendo.

(IV, 838). Nature of territorial court's jurisdiction.

ed in Fuller & Fuller Co. v. Johnson, 8 Okl. 605, 58 Pac.
ed States court of Indian territory is not "United States

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court" within meaning of term as used in Okl. St. 1890, p. 930, § 2, relating to limitation of actions.

9 How. 248-261, 13 L. 125, MASON v. FEARSON.

Syl. 1 (IV, 839). Public officer must do duty.

Approved in dissenting opinion in Battery Park Bank v. Madison Co. Commrs., 135 N. C. 242, 47 S. E. 1019, majority holding Laws 1903, p. 490, c. 289, declaring that for purpose of funding floating debt of Madison county commissioners are authorized and empowered to issue new bonds, is not mandatory.

9 How. 297-314, 13 L. 145, HUMPHREYS v. LEGGETT.

Syl. 1 (IV, 844). Equitable relief against judgment against surety.

Approved in King v. Davis, 137 Fed. 233, 235, where petitioner applying to vacate judgment in ejectment, not party to action, is in possession, she is entitled to order directing marshal in executing writ of possession, to leave possession undisturbed.

9 How. 314-335, 13 L. 153, LYTLE v. STATE OF ARKANSAS.

Syl. 2 (IV, 845). Land receiver's decision final.

Approved in De Laittre v. Board of Commrs., 149 Fed. 804, decision of commissioners for sale and disposition of Oregon school lands as to who should be entitled to patent prior to issuance thereof is not reviewable by courts.

Syl. 3 (IV, 847). Public lands—Loss by officers—Negligence.

Approved in Smith v. Bonifer, 132 Fed. 891, where selection of lands for allotment has been made by Indian and his right to their allotment to him has attached, act of commissioners in wrongfully allotting them to another cannot cut off his heirs; Tegarden v. Le Marchel, 129 Fed. 490, state statute giving defendant in ejectment right to recover value of improvements made by him in good faith under color of title does not apply to claim under government patent; Smith v. Love, 49 Fla. 239, 38 So. 379, upholding power of equity to convert holder of legal title into trustee for true owner of government land.

Distinguished in Russian-American etc. Co. v. United States, 199 U. S. 578, 50 L. 316, 26 Sup. Ct. 157, value of improvements made on public lands in Alaska by mere trespasser occupying land without shadow of title cannot be recovered from United States upon selection of land by government for fish culture station.

9 How. 336-351, 13 L. 164, BOSWELL v. OTIS.

Syl. 1 (IV, 851). Jurisdiction, how acquired.

Approved in Cella Com. Co. v. Bohlinger, 147 Fed. 422, holding void Kirby's Dig., § 835 (Ark.), authorizing personal judgment against foreign corporation on cause of action in favor of resident

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of summons on state auditor; Brand v. Brand, 116 Ky. . W. 870, 63 L. R. A. 206, where nonresident defendant rty within state, circuit court of county where such prop- located acquired jurisdiction of defendant to extent of of levy of attachment therein; Clapp v. Houg, 12 N. D. Am. St. Rep. 589, 98 N. W. 712, 65 L. R. A. 757, holding Codes 1899, § 632, subd. 2, relating to appointment of dministrator where death of person is not satisfactorily hen applied to estate of living person.

(IV, 854). Service of publication.

ed in Hill v. Henry, 66 N. J. Eq. 156, 57 Atl. 556, P. L., oviding for publication against unascertained heirs, devisees al representatives, and decree against them by their class n only does not apply to suits to quiet title.

56-366, 13 L. 172, GAINES v. NICHOLSON.

(IV, 857). Vesting of state title to Indian lands.

ed in Wallace v. Adams, 143 Fed. 722, claimants of citizen- secured judgments in their favor, which were final under 39, and 30 Stat. 591, when rendered, and took possession as their allotments, before judgments were made review- uired no vested rights against subsequent legislation en- or to allotment.

72-385, 13 L. 179, HARRISON v. VOSE.

(IV, 858). Duties—Arrival of vessel.

ed in Stone v. Shallus, 143 Fed. 488, wholly decayed fruit in packages may be culled out and duty paid on mer- quantity remaining, regardless of its percentage; United Hartwell Lumber Co., 142 Fed. 436, where merchandise rted before tariff act of 1897 became operative and tender before importation was rejected and not renewed till act effect, it was subject to act of 1897; Franklin Sug. Ref. Co. States, 142 Fed. 378, additional duty on imported mer- upon which export bounty has been paid, is assessable only ty entered irrespective of cause of shrinkage.

86-390, 13 L. 185, HILL v. UNITED STATES.

(IV, 859). Government not liable for torts.

ed in Kirk v. United States, 131 Fed. 339, bill not main- jointly against United States and marshal to restrain complainant's property on judgment in favor of United forfeited recognizance; Board of Education v. Volk, 72 86, 74 N. E. 650, Rev. St., § 2676, creating liability against possessor of premises whereon unlawful wall excavation does not apply to board of education holding title to lot avated.

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9 How. 390-406, 13 L. 187, TAYLOE v. MERCHANTS' FIRE INS. CO.

Syl. 3 (IV, 862). Acceptance of offer by mail—Time.

Approved in Burton v. United States, 202 U. S. 385, 50 L. 1072, 26 Sup. Ct. 688, applying rule where offer and acceptance of contract made by letter and telegram. See 110 Am. St. Rep. 747, note.

Syl. 6 (IV, 866). Insurance—Denial of contract waives proof of loss.

Approved in Phenix Ins. Co. v. Kerr, 129 Fed. 727, 64 C. C. A. 251, 66 L. R. A. 569, distinct denial of liability under policy after loss and within time prescribed for proofs, on ground of want of contract, waives proof of loss.

Syl. 7 (IV, 869). Compelling issuance of insurance policy.

Approved in Summers v. Mutual Life Ins. Co., 12 Wyo. 390, 109 Am. St. Rep. 1005, 75 Pac. 942, 66 L. R. A. 812, where plaintiff executed note to insurance agent in consideration of agreement that company should issue policy within stated time, and company refused to issue policy, proceeds of note are recoverable in assumpsit.

Syl. 8 (IV, 872). Relief under general prayer.

Approved in United Cigarette Co. v. Wright, 132 Fed. 197, bill to require accounting from defendant as agent is not multifarious because different and separate transactions are set out, all growing out of agency, and discovery and accounting demanded; In re Leeds Woolen Mills, 129 Fed. 926, bankruptcy court may determine question of ownership of property wrongfully obtained from receiver in same proceeding as matter affecting propriety of entering decree for its value; Hardy v. La Dow, 72 Kan. 178, 83 Pac. 403, where plaintiff alleged that terms of lease were agreed upon, but that advantage taken of infirmities, and he signed lease not conforming to agreement, and he prayed for cancellation and general relief, court could reform lease.

9 How. 407-420, 13 L. 194, TOWNSEND v. JEMISON.

Syl. 1 (IV, 872). Limitation statute affects remedy.

Approved in State v. Aberdeen, 34 Wash. 65, 74 Pac. 1023, upholding Laws 1903, p. 26, c. 24, § 1, prohibiting plea of limitations in suits brought by state, though statute had run prior to adoption of act, as applied to action by state to recover proportion of liquor license fees.

9 How. 421-450, 13 L. 200, DOE v. ESLOVA.

Syl. 2 (IV, 876). Regulation of land grant by ceded nation.

Approved in Territory v. Delinquent Taxpayers, 12 N. M. 65, 73 Pac. 622, lands embraced in perfect Mexican grant are taxable,

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rant submitted for confirmation by court of private land d patent not yet issued.

1-479, 13 L. 220, GOODTITLE v. KIBBE.

IV, 877). Tide lands vest in state on admission.

ed in Kneeland v. Koeter, 40 Wash. 363, 82 Pac. 609, 1 L. . S.) 745, Congress could grant tide land between high and r within territory.

22-529, 13 L. 242, BANK OF ALABAMA v. DALTON.

IV, 880). Limitation against actions on foreign judgments.

ed in Lamb v. Powder Riv. etc. Co., 132 Fed. 438, 442, 67 558, 65 C. C. A. 571, holding Colorado Laws 1899, p. 248, c. ding act of 1895, relating to limitations on action on foreign s, void as applied to foreign judgment rendered prior to f act; Terry v. Heisen, 115 La. 1083, 40 So. 466, upholding 98, art. 233, establishing three year prescription against annul tax sales.

(IV, 881). Limitations on actions on foreign judgments.

ed in Pittsburgh etc. Ry. Co. v. Lightheiser, 163 Ind. 259, 222, under Acts 1899, p. 58, complaint for personal injuries ployer's liability act need not allege that plaintiff was in f due care; Atchison etc. Ry. Co. v. Grain Co., 68 Kan. 588, 052, Civil Code, § 18, subd. 3, providing that cause of action n fraud shall not be deemed to have accrued until discovery does not apply to action founded on contract; dissenting Ayres v. Cone, 138 Fed. 786, majority holding where validity of petitioning creditor in bankruptcy is put in issue by 's answer and decided in creditor's favor, petitioning claim cannot be contested when filed for allowance before e.

03-619, 13 L. 276, FLEMING v. PAGE.

0.) Miscellaneous. Cited in Cullins v. Overton, 7 Okl. 482, 705, where Texas authorities organized disputed territory ty government, judgment rendered in court of such county s that of de facto court.

19-637, 13 L. 282, MARRIOTT v. BRUNE.

(IV, 892). Duty on weight on arrival.

ed in American Cigar Co. v. United States, 146 Fed. 487, tobacco entered for warehouse should be based on its weight f withdrawal and not of entry; Stone v. Shallus, 143 Fed. ning 137 Fed. 637, holding wholly decayed fruit imported in may be culled out, and duty paid on merchantable quantity regardless of percentage; Franklin Sug. Ref. Co. v. United 42 Fed. 378, 380, additional duty imposed by Act of 1897,

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c. 11, § 5, on imported merchandise upon which export bounty paid by producing country, is assessable only on quantity entered, irrespective of cause of shrinkage; Shaw v. United States, 141 Fed. 470, assessment of duty on wine without allowance for leakage is void.

Distinguished in United States v. Shaw, 144 Fed. 330, (reversing Shaw v. United States, 141 Fed. 470), under Tariff Act 1897, c. 11, § 1, sched. H, par. 296, there can be no allowance for leakage of wine while in transit to this country; Franklin Sug. Ref. Co. v. United States, 137 Fed. 657 (reversed 142 Fed. 376), additional duty imposed by Act of 1897, c. 11, § 5, on imported merchandise upon which export bounty paid by producing country, is assessable on invoice weight at time of exportation without allowance for shrinkage.

9 How. 637-647, 13 L. 290, UNITED STATES v. SOUTHMAYD.

Syl. 1 (IV, 895). Duties—Effect of drainage en route.

Approved in Franklin Sug. Ref. Co. v. United States, 142 Fed. 379, additional duty imposed by Act of 1897, c. 11, § 5, on imported merchandise upon which export bounty paid by producing country, is assessable only on quantity entered, irrespective of cause of shrinkage.

X HOWARD.

10 How. 72-81, 13 L. 333, McNULTY v. BATTY.

Syl. 1 (IV, 899). Dismissal of appeal pending on state's admission.

Approved in United States v. Sena, 12 N. M. 414, 78 Pac. 62, repeal of Laws 1901, p. 190, c. 99, deprived supreme court of jurisdiction over criminal appeal not applied for during term at which final judgment rendered.

10 How. 82-99, 13 L. 337, STRADER v. GRAHAM.

Syl. 1 (IV, 899). Supreme court—Questions of local law.

Approved in dissenting opinion, Haddock v. Haddock, 201 U. S. 611, 50 L. 887, 26 Sup. Ct. 525, mere domicile within state of one party to marriage does not give courts of that state jurisdiction to render decree of divorce enforceable in other states against nonappearing nonresident only constructively served.

10 How. 99-102, 13 L. 344, WILSON v. STANFORD.

Syl. 1 (IV, 900). Supreme court—Setting aside assignment of patent.

Distinguished in Harrington v. Atlantic etc. Tel. Co., 143 Fed. 336, upholding federal jurisdiction over suit for infringement of patent by user where under agreement between owner of patent and controlling

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in defendant patent not to be transferred to corporation till
tock and defendant violated agreement.

9-144, 13 L. 348, HOYT v. UNITED STATES.

V, 902). Treasury transcript as evidence.

l in United States v. Pierson, 145 Fed. 818, 819, applying
on on bond of Indian agent.

V, 902). Compensation of collector of customs.

d in Avery v. Pima Co., 7 Ariz. 34, 60 Pac. 704, under Ari-
e defining sheriff's duties and prescribing salary, sheriff can-
l extra for care of federal prisoners confined in county jail.

4-187, 13 L. 376, Hallett v. Collins.

V, 903). Marriage per verba de praesenti.

l in Reaves v. Reaves, 15 Okl. 252, 82 Pac. 494, upholding
n Oklahoma per verba de praesenti followed by cohabita-

5-242, 13 L. 397, GREELY v. THOMPSOM.

IV, 908). Tariff—Appraisement—Personal examination nec-

l in United States v. Shaw, 144 Fed. 331, under Tariff Act
l, § 1, sched. H, par. 296, there can be no allowance for
wine, while in transit; United States v. Murphy, 136 Fed.
on appeal from local appraisement general appraiser who
praisement did not have goods nor samples thereof reap-
was void; United States v. Lahey, 132 Fed. 182, in finding
ue of goods collector, after appraiser had appraised goods
d certain item as nondutiable, include such item in invoice
assess duty thereon upon mere inspection of invoice.

2-257, 13 L. 405, MAXWELL v. GRISWOLD.

V, 909). When payment involuntary.

l in Knudsen etc. Co. v. Chicago etc. R. Co., 149 Fed. 974,
of shipment, which, after delivery to him, and with full
of facts, paid charges including item for icing in transit, in
published tariff, cannot recover item for icing.

8-376, 13 L. 449, LANDES v. BRANT.

V, 914). Perfected Spanish title inures to purchaser.

l in United States v. Clark, 200 U. S. 607, 50 L. 616, 26
40, purchaser of timber lands after receiver's final receipts
, is entitled to protection as bona fide purchaser against can-
r original frauds of entryman, of patents afterward issued;
tes v. Detroit Timber etc. Co., 200 U. S. 335, 50 L. 505, 26
82, purchaser from patentee's for value without notice of
art of entryman is bona fide purchaser within timber act of

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1878, though he acquired interest in land under contract for standing timber prior to issuance of patent; United States v. Anderson, 194 U. S. 399, 401, 48 L. 1039, 24 Sup. Ct. 716, United States cannot retain as against its grantees of lands within indemnity limits of railroad grant sum collected from trespassers thereon for removal of stone from land between time of selection to supply deficiency and approval of selection by Interior Department; Peyton v. Desmond, 129 Fed. 11, 63 C. C. A. 651, patentee under homestead laws may recover value of timber act after initiation of claim and prior to patent; Emmons v. Harding, 162 Ind. 160, 70 N. E. 144, applying rule where deed delivered to third person for delivery at grantor's death; Gilbert v. McDonald, 94 Minn. 291, 110 Am. St. Rep. 369, 102 N. W. 713, equitable interest of assignee of soldier's additional homestead certificate may be conveyed by quitclaim deed.

Syl. 5 (IV, 916). Notorious adverse possession as notice.

See 104 Am. St. Rep. 345, note.

10 How. 376-394, 13 L. 461, PHILADELPHIA & WILMINGTON R. R. CO. v. MARYLAND.

Syl. 1 (IV, 917). Consolidation of corporations—Immunities of one.

Approved in Shaw v. Covington, 194 U. S. 598, 48 L. 1133, 24 Sup. Ct. 754, new corporation formed by consolidation under Kentucky act of 1893 cannot claim exclusive privilege to conduct electric light and power business conferred by statute on one of constitutent companies.

10 How. 395-402, 13 L. 469, BALTIMORE & SUSQUEHANNA R. R. CO. v. NESBIT.

Syl. 1 (IV, 919). Corporate charter—Obligation of contracts.

Approved in Whitlock v. Hawkins, 105 Va. 251, 53 S. E. 404, upholding Act of 1906, amending Code, c. 23, relating to assessment of lands.

Distinguished in Union Ry. Co. v. Standard Wheel Co., 149 Fed. 703, under Shannon's Tenn. Code, relating to condemnation proceedings, where judgment has been entered assessing damages for land sought for railroad right of way on trial of appeal, petitioner cannot dismiss as to portion of land merely because damages are too high.

10 How. 402-419, 13 L. 472, BUTLER v. PENNSYLVANIA.

Syl. 1 (IV, 922). Law repealing act creating office.

Approved in Harwood v. Perrin, 7 Ariz. 117, 118, 60 Pac. 892, upholding act providing for appointment of county assessors though assessor elected for term under prior act; McGovern v. Mitchell, 78 Conn. 553, 63 Atl. 439, upholding Laws 1905, p. 410, c. 213, increasing salaries of judges to take effect on passage of act; Mial v. Ellington, 134 N. C. 141, 164, 46 S. E. 964, 972, 65 L. R. A. 697, upholding statute changing prior act relating to office of road supervisor, though

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t appointed for definite term loses office; dissenting opinion in v. Albright, 12 N. M. 318, 319, 78 Pac. 212, majority holding ppointed on March 23, 1903, under Laws 1903, p. 38, c. 27, ed by Laws 1903, p. 80, c. 49, which was before act dividing o county took effect, not entitled to office.

442-461, 13 L. 489, UNITED STATES v. BROOKS.

(IV, 925). Fee simple—Indian treaty.

ed in Conway v. United States, 149 Fed. 266, where, under 892, land allotted to two members of Ponca tribe, who subse- intermarried and thereafter each separately made separate ications, but trust patent by mistake made to husband for d, wife not thereby deprived of her land.

uished in Wallace v. Adams, 143 Fed. 722, upholding 32 Stat. ting citizenship court empowered to review final judgments of der 29 Stat. 339.

477-509, 13 L. 504, GAYLER v. WILDER.

(IV, 926). Inventor cannot sue before patent.

ed in Hartman v. Park & Sons Co., 145 Fed. 361, 368, up- ight of owner of proprietary medicine to sell to wholesaler on that they sell to retailers designated by him only and at rice and agreement with retailers to sell only at certain price; nn, 129 Fed. 497, bankrupt's incorporeal interest in alleged pending application for patent does not pass to trustee.

(IV, 928). Patents—Assignment and license distinguished.

ed in Cortelyou v. Chas. Eneu Johnson & Co., 138 Fed. 117, g right of owner of patent for rotary neostyle to sell ma- der license restriction that they shall be used only with paper nade by licensor; Shepherd v. Deitsch, 138 Fed. 84, since per- nse granted by patentee to make and vend patented article, right to license another, is not an assignment, licensee is not party to suit for infringement; Empire City Amusement Co. , 134 Fed. 133, where bill to enjoin infringement of copyright lays, right to use of which plaintiff acquired through assign- om owners, demurrer to bill because assignor of one of plays party is not good.

511-540, 13 L. 518, EAST HARTFORD v. HARTFORD DGE CO.

(IV, 931). Obligation of contracts—Ferry franchise.

ed in Worcester v. Worcester etc. St. Ry. Co., 196 U. S. 549, , 25 Sup. Ct. 327, upholding Mass. Laws 1898, c. 578, abrogat- sions of contract between city and street railway with reference ing of streets; Saginaw County Suprs. v. Hubinger, 137 Mich. N. W. 263, upholding Loc. Acts 1901, p. 114, amending town-

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ship road act and exempting such townships from taxation for county roads.

10 How. 557-586, 13 L. 537, ST. JOHN v. PAINE.

Syl. 6 (IV, 935). Collision—Necessity for and location of lookout.

Approved in Brigham v. Luckenbach, 140 Fed. 326, holding tug leaving Portland harbor liable for collision with schooner caused by inattention of lookout.

10 How. 586-609, 13 L. 551, NEWTON v. STEBBINS.

Syl. 2 (IV, 936). Collision—Meeting of steamer and ship.

Approved in Quinette v. Bisso, 136 Fed. 831, 69 C. C. A. 825, tug going up Mississippi in dense fog at speed of nine miles per hour is liable for death of person run down while crossing in skiff.

XI HOWARD.

11 How. 33-47, 13 L. 593, OAKEY v. BENNETT.

Syl. 2 (V, 9). Bankruptcy assignment not effective in other country.

Cited in Hyde v. McFaddin, 140 Fed. 442, arguendo.

11 How. 154-163, 13 L. 643, UNITED STATES v. MORGAN.

Syl. 6 (V, 14). Receiver of public moneys is insurer.

Approved in Van Trees v. Territory, 7 Okl. 363, 54 Pac. 498, county treasurer liable on bond though funds deposited in solvent bank which afterward failed, and funds lost without his fault.

11 How. 165-177, 13 L. 647, D'ARCY v. KETCHUM.

Syl. 1 (V, 16). Plea of nul tiel record.

See 103 Am. St. Rep. 312, note.

Syl. 2 (V, 16). Foreign judgments without service—Credit.

Approved in Cella Com. Co. v. Bohlinger, 147 Fed. 422, holding void Arkansas act of 1901, authorizing personal judgment against foreign corporation on cause of action in favor of resident on service of summons on state auditor; Murray v. Strong, 2 Alaska, 519, judgment in Yukon Territory, Canada, against resident of Alaska, on notice served on him in Alaska, is void; Cuykendall v. Doe, 129 Iowa, 457, 105 N. W. 700, where judgment has been regularly confessed under warrant of attorney and entered in court of state of debtor's residence and in accordance with its laws, judgment is enforceable in Iowa though judgments so confessed not permitted by Iowa law; dissenting opinion in Haddock v. Haddock, 201 U. S. 626, 50 L. 893, 26 Sup. Ct. 525, majority holding mere domicile within state of one spouse does not give

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rt jurisdiction to render divorce decreé enforceable in other
ainst nonappearing nonresident defendant only constructively

177-184, 13 L. 653, HORSTMAN v. HENSHAW.

(V, 20). Holder guarantees prior indorsements—Drafts.

uished in La Fayette v. Merchants Bank, 73 Ark. 567, 108
Rep. 71, 84 S. W. 702, 68 L. R. A. 231, where drawee of
raft paid it to bank, which had discounted and indorsed it,
drawee did not notify bank of forgery for six months does
ude recovery by drawee where he had hnd no suspicion of

185, 13 L. 657, BEVINS v. RAMSAY.

(V, 21). Error not appeal lies at law.

ed in Comstock v. Eagleton, 196 U. S. 100, 49 L. 403, 25 Sup.
applying rule to judgment of territorial court in action for
risonment.

204-208, 13 L. 665, BROOKS v. NORRIS.

(V, 23). Error not brought till writ filed.

ed in Rutan v. Johnson, 130 Fed. 110, 64 C. C. A. 443, cir-
of appeals cannot review judgment on writ of error not is-
after six months from entry of judgment.

(V, 24). Limitation to writ of error raised by motion.

ed in O'Donnell v. State, 126 Wis. 601, 106 N. W. 19, there
ver by state of statute requiring error in criminal cases to be
in two years, where attorney general before filing of briefs,
dismiss because of lapse of time.

248-272, 13 L. 683, HOTCHKISS v. GREENWOOD.

V, 28). Combination of known parts not patentable.

ed in Cutler etc. Co. v. Union Elec. Mfg. Co., 147 Fed. 276,
oid Baker patent No. 368, 807, for electric resistance coil, void
of patentable novelty; Sloan Filter Co. v. Portland Gold Min.
Fed. 26, holding void Sloan patent No. 587, 874, for barrel
use in filtration of precious metal solutions; Thomson-Houston
Ohio Brass Co., 129 Fed. 379, upholding Van Depoele patent
39, claim 18, for turn buckle.

uished in New York Belting etc. Co. v. Sierer, 149 Fed. 770,
oid Furness & Watts patent No. 527,961, for tiled floor or wall
f prior art.

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11 How. 272-292, 13 L. 693, REESIDE v. WALKER.

Syl. 3 (V, 30). Mandamus to compel ministerial or discretionary act.

Approved in Wilson v. Cox, 73 S. C. 400, 53 S. E. 613, mandamus does not lie to compel county dispenser to open and operate dispensary, where in order to do so court would have to set aside election deciding against dispensary.

Syl. 5 (V, 31). No setoff against government.

Approved in United States v. Gillies, 144 Fed. 992, following rule; United States v. Warren, 12 Okl. 364, 71 Pac. 690, when United States is plaintiff, defendant may present setoff, but no judgment can be rendered against United States for balance due defendant.

11 How. 297-329, 13 L. 703, VAN RENSSELAER v. KEARNEY.

Syl. 1 (V, 34). Following state statutory construction.

Approved in Yocum v. Parker, 134 Fed. 212, 67 C. C. A. 227, construing Missouri statute and devise thereunder as vesting fee simple subject to be devested on death of devisee without living issue.

Syl. 3 (V, 34). Estoppel of heirs by grantor's deed.

Approved in Ward v. Foley, 141 Fed. 366, contract to sell grantor's interest in three hundred and twenty acres of land at $14 per acre is sale of interest in land at rate of $14 for each acre in entire tract; Cooper v. Burns, 133 Fed. 404, under Neb. Comp. St. 1903, c. 53, § 2, relating to conveyances as contracts of married women, wife joining with husband in mortgage of land in which she had life estate cannot assert that after-acquired title to fee did not inure to mortgagee; Wheeler v. Young, 76 Conn. 48, 55 Atl. 672, title acquired by one a year after giving warranty deed without title in fact or of record does not inure to grantee who failed to examine record, as against bona fide mortgagor of grantor; Henderson v. Beatty, 124 Iowa, 166, 99 N. W. 717, agreement to convey right, title and interest is not agreement to convey fee simple, though subsequent clause provides for execution of warranty deed on payment of price; Johnson v. Mutual Life Ins. Co., 113 Ky. 888, 69 S. W. 756, married woman is estopped, as against bona fide purchaser, from denying recital in deed of separate property that she had received consideration; Bradley Estate Co. v. Bradley, 97 Minn. 166, 106 N. W. 112, holding indenture under which respondent claimed was conveyance in praesenti, estopping grantor from taking conveyance and asserting title against prior grantee; Weeks v. Wilkins, 139 N. C. 218, 51 S. E. 910, bargain and sale deed containing warranty clause estops infant grantor from setting up after-acquired title where he failed to disaffirm on attaining majority; Flanary v. Kane, 102 Va. 566, 567, 46 S. E. 681, grantor in deed of bargain and sale cannot acquire existing encumbrance and assert it against his grantee. See 105 Am. St. Rep. 862, note.

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) Miscellaneous. Cited in Pratt v. Ratliff, 10 Okl. 174, 61 as to what judgments are res adjudicata.

329-361, 13 L. 717, WEATHERHEAD v. BASKERVILLE.

(V, 39). Secondary Evidence—Preliminary proof.

ed in Brown v. Harkins, 131 Fed. 66, 65 C. C. A. 301, in ac- istiller to recover revenue taxes wrongfully imposed, evidence tiff's books had been taken from him and carried to collector's later to revenue agent's office, and last seen three years after iminal case against plaintiff, and search made in agent's office, ient to admit oral evidence of contents.

362-375, 13 L. 730, PARKS v. ROSS.

(V, 40). When verdict directed.

ed in Gunn v. Union R. R. Co., 27 R. I. 327, 62 Atl. 121, up- Laws 1896, c. 251, § 11, authorizing supreme court to direct without any further trial by jury.

(V, 41). Liability of agent on principal's contract.

ed in Dunn v. Foley, 78 Conn. 673, 63 Atl. 123, registrar of thorized by statute to appoint assistant for each voting dis- e paid out of treasury is not personally liable for services of

437-461, 13 L. 761, WEBSTER v. REID.

(V, 45). Judgment in personam without notice is void.

ed in Cella Com. Co. v. Bohlinger, 147 Fed. 422, holding Ar- t of 1901, authorizing personal judgment against foreign cor- on cause of action in favor of resident on service on state Hill v. Henry, 66 N. J. Eq. 156, 57 Atl. 556, Chancery Act, § ding for publication against unascertained heirs, devisees, or representatives, and decree against them by class designation not apply to suits to quiet title.

(V, 47). Deprivation of jury in legal actions.

ed in Rasmussen v. United States, 197 U. S. 525, 528, 49 L. 25 Sup. Ct. 514, holding void 31 Stat. 358, c. 786, providing trials for misdemeanors in Alaska six jurors shall constitute y; Carlson v. Sullivan, 146 Fed. 480, party in possession of iming whole title, is entitled to right to jury trial on issue of iner v. McKay, 2 Alaska, 566, in action to quiet title issues ouster and damages raised by pleadings are triable by jury; issom, 12 Okl. 330, 331, 72 Pac. 375, commenced prior to 1901, g cause to give parties to action to assess value of improve- de on land by occupying claimants as provided by act of 1901.

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11 How. 461-480, 13 L. 771, VAN BUREN v. DIGGES.

Syl. 1 (V, 50). Setoff of damages against building contract.

Approved in Richardson v. Lowe, 149 Fed. 632, though fraud inducing purchase of property waived by laches as ground for rescission of contract, purchaser may plead resulting damages as failure of consideration in defense of action on purchase money note; Williams v. Neely, 134 Fed. 7, 69 L. R. A. 232, 67 C. C. A. 171, partial failure of consideration resulting from defect of title is good defense pro tanto to action on purchase money note; dissenting opinion in Dieckerhoff v. United States, 136 Fed. 549, 69 C. C. A. 255, majority holding where importers failed to return, on collector's demand, merchandise delivered without examination, there can be no recovery on bond given under Rev. St., § 2899, without proof of actual damages.

11 How. 480-492, 13 L. 779, CONRAD v. GRIFFEY.

Syl. 1 (V, 51). Corroboration of impeached witness by declarations.

Approved in Burks v. State, 78 Ark. 274, 93 S. W. 984, following rule; Legere v. State, 111 Tenn. 375, 77 S. W. 1061, where witness in murder case made prior statements contradicting those made on trial, corroborative statements made while negotiating for immunity are inadmissible.

11 How. 552-570, 13 L. 809, UNITED STATES v. HUGHES.

Syl. 2 (V, 55). Rights and remedies of government as land owner.

Approved in Lynch v. United States, 13 Okl. 145, 73 Pac. 1096, applying rule in considering sufficiency of petition by government to cancel patent for fraud. See 101 Am. St. Rep. 170, note.

11 How. 587-609, 13 L. 824, HOGG v. EMERSON.

Syl. 4 (V, 58). Patents—Specification control drawings.

Approved in Robins etc. Belt Co. v. American Road Mach. Co., 145 Fed. 927, upholding Robins patent No. 571,604, for belt conveyor, valid and infringed.

11 How. 663-669, 13 L. 857, UNITED STATES v. TURNER.

Syl. 2 (V, 59). Judicial notice of Spanish titles and laws.

See 113 Am. St. Rep. 869, 873, note.

11 How. 669-676, 13 L. 859, BENNETT v. BUTTERWORTH.

Syl. 2 (V, 60). Distinction between law and equity.

Approved in Chapman v. Yellow Poplar etc. Co., 143 Fed. 206, where bill sought reconveyance and damages for breach of contract under which conveyance made, court could compel separation by filing of declaration at law for damages; Davidson etc. Imp. Co. v. Parlin etc. Co., 141 Fed. 40, simple contract creditor who has not reduced his demand to judgment and exhausted remedy at law cannot have claim adjudicated in federal equity court; Anglo-American etc. Co. v. Lombard, 132 Fed.

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C. C. A. 89, in action at law to enforce stockholder's liability, ıt cannot set off indebtedness of corporation to him.

(V, 62). Revision in appellate court of errors apparent.

ved in Nichols v. Board of Commrs. Albany County, 13 Wyo. 8, 682, where final judgment is not supported by pleadings or it may be vacated on error on record proper without bill of ıs, though no exception taken to proceedings below.

XII HOWARD.

24-39, 13 L. 877, THREDGILL v. PINTARD.

(V, 66). Purchase money lien on sale by pre-emptioner.

ved in Petroski v. Minzgohr, 144 Mich. 358, 108 N. W. 78, ıt entering complainant's land and cutting timber thereon ll of sale of all timber defendant might remove prior to cer- e, knowing complainant relied on tax title, could not acquire title and hold adversely to complainant; Nicholson v. Cong- Minn. 194, 103 N. W. 1036, where application to locate land hippewa treaty of 1855 is accepted and approved by land ent, equitable title vests in applicant though price not then

. 51-59, 13 L. 889, FARMERS' BANK OF VIRGINIA v.)VES.

(V, 68). Rescission of contest—Statu quo.

ved in Buskirk Bros. v. Peck, 57 W. Va. 372, 50 S. E. 437, rule in construing forfeiture clause in contract of sale of ın tract to be cut and removed within specified time.

(V, 68). Accord and satisfaction as defense to judgment.

)0 Am. St. Rep. 419, note.

79-87, 13 L. 901, HARRIS v. RUNNELS.

(V, 70). Contracts in contravention of statute.

ved in Iowa etc. Mining Co. v. United States etc. Co., 146), where foreign corporation was acting as corporation in time it made contract sued on, it is no defense to action that it had not complied with Code Iowa, § 1637, relating of articles of incorporation by foreign corporations; State ican Book Co., 69 Kan. 10, 76 Pac. 414, 1 L. R. A. (N. S.) ıtracts made with foreign corporation before it has obtained ın to do business in state are not subject to cancellation for son.

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Syl. 2 (V, 72). Contract contravening statute imposing penalty.

Approved in Montgomery v. Whitbeck, 12 N. D. 393, 96 N. W. 329, where all policy-holders in mutual insurance company are on same footing, no estoppel will be indulged against any member asserting ultra vires nature of business done; Poling v. Board of Education, 56 W. Va. 256, 49 S. E. 150, contract in violation of statute against corruption in office is void and unenforceable.

12 How. 88-97, 13 L. 905, UNITED STATES v. BROMLEY.

Syl. 2 (V, 74). Revenue laws within appeals act.

Approved in Bryant Bros. Co. v. Robinson, 149 Fed. 325, on removal of equity suit to federal court it must conform to practice in force in such court.

12 How. 139-159, 13 L. 927, RUSSELL v. SOUTHARD.

Syl. 1 (V, 77). Equity practice not variable by states.

Approved in James v. Gray, 131 Fed. 408, 65 C. C. A. 385, loan made by wife to husband from separate estate is provable as debt against his estate in bankruptcy, without regard to its enforceability under state laws.

Syl. 2 (V, 77). Parol to show absolute deed mortgage.

Approved in Weiseham v. Hocker, 7 Okl. 254, 54 Pac. 465, and Welborn v. Dixon, 70 S. C. 115, 49 S. E. 234, both following rule.

Syl. 3 (V, 78). Inadequacy of consideration as evidence of mortgage.

Approved in Collins v. Denny Clay Co., 41 Wash. 143, 82 Pac. 1014, where decedent, being insolvent and indebted in large sum, of which he owed defendant less than $8,000, surrendered $27,000 worth of stock in satisfaction of $3,500 of his debt to them, reserving but four months to pay debt and reclaim stock, transaction was mortgage and right of redemption not lost; Hursey v. Hursey, 56 W. Va. 157, 49 S. E. 370, where at time of execution of deed grantee paid debt for grantor and parties intended that sum so paid should be debt due from grantor to grantee and secured by deed, payment will be so treated.

Syl. 5 (V, 79). Release to mortgagee in possession.

Approved in Carveth v. Winegar, 133 Mich. 38, 94 N. W. 383, declaring warranty deed accompanied by contract to return to vendor half of proceeds of sale to be mortgage; Liskey v. Snyder, 56 W. Va. 623, 49 S. E. 520, setting aside release of equity of redemption; dissenting opinion in Stuart v. Hauser, 9 Idaho, 78, 72 Pac. 727, majority holding in equity suit by grantor to have deed absolute declared mortgage findings of trial court in form of deed not disturbed where evidence conflicts.

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256-272, 13 L. 978, DUNDAS v. HITCHCOCK.

(V, 87). Substantial compliance with acknowledgment

Am. St. Rep. 570, note.

272-284, 13 L. 985, CLARK v. BARNWELL.

V, 89). Bill of lading—Exception—Dangers of sea.

ed in The Folmina, 143 Fed. 639, under bill of lading ex-
essel from liability for damage from sweating or sea water,
liable where she was seaworthy and cargo properly stowed,
n that there was no negligence during voyage accountable
of sea water.

(V, 90). Loss where damage by excepted peril.

ed in Carr v. Texas etc. Ry. Co., 194 U. S. 432, 48 L. 1057,
Ct. 663, burden of showing fire caused loss of shipment of
as due to negligence of carrier is on shipper where bill of
ntains provision exempting carrier from liability for dam-
ed by fire; The La Kroma, 138 Fed. 938, ship is relieved
ility for shortage in weight of shipment of bales of fibre
l of lading reciting "not responsible for weight nor qual-
loose bales," where it shows all bales shipped were de-
Lazanes v. Barber, 136 Fed. 536, 69 C. C. A. 310, upholding
of evidence to show that goat skins injured by brine
from citron barrels stowed near skins; Nashville etc. Ry.
ne, 112 Tenn. 371, 79 S. W. 1036, applying rule to shipment

(V, 92). Bill of lading—Burden to prove condition.

Am. St. Rep. 353, note.

293-299, 13 L. 993, ACHISON v. HUDDLESON.

(V, 94). Compact between Maryland and United States.

n Wheeling etc. R. R. Co. v. Town of Triadelphia, 58 W. Va.
E. 501, arguendo.

299-327, 13 L. 996, COOLEY v. BOARD OF WARDENS OF
PORT OF PHILADELPHIA.

(V, 95). Contemporaneous construction of constitution.

ed in State v. Northern Pac. Ry. Co., 95 Minn. 47, 103 N.
foreign railway doing business here and paying taxes under
nings law, upon which no demand made for listing of credits,
evented by failure to list credits from deducting debts from
Ex parte Anderson, 45 Tex. Cr. 399, 81 S. W. 987, city court
risdiction to try accused for alleged violation of state penal

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Syl. 6 (V, 96). Commerce—State pilot laws.

Approved in Olsen v. Smith, 195 U. S. 341, 49 L. 229, 25 Sup. Ct. 52, upholding Texas pilotage laws; Allen v. Reed, 10 Okl. 124, 60 Pac. 788, holding void Stat., c. 23, relating to changing of county seats void as conflicting with act of Congress of 1893, relating to opening of Cherokee Outlet.

12 How. 347-360, 13 L. 1017, RICH v. LAMBERT.

Syl. 1 (V, 104). Appeal—Amount in dispute—Separate libels.

Approved in The Joseph B. Thomas, 148 Fed. 767, where number of libelants join in suit in admiralty for wages, their claims cannot be added together to give appellate jurisdiction; Feely v. Bryan, 55 W. Va. 591, 47 S. E. 310, where several creditors with separate demands attack mortgage as preference and decree adjudges property to be for benefit of creditors and orders particular sums to several creditors, such sums cannot be added so as to give appellate jurisdiction.

12 How. 361-367, 13 L. 1023, UNITED STATES v. REID.

Syl. 1 (V, 106). State practice does not govern federal crimes.

Approved in Wiemer v. Louisville Water Co., 130 Fed. 255, decision of highest state court denying mandamus to compel certain action by water company is not binding on federal court in equity suit, where under state statutes court must necessarily have held that mandamus did not lie against defendant; Trafton v. United States, 147 Fed. 514, arguendo.

Syl. 3 (V, 107). Admissibility of evidence governed by state law.

Approved in Virginia v. Felts, 133 Fed. 93, competency of witness is governed by state law on trial of defendant in criminal case who has removed case into federal court.

12 How. 443-465, 13 L. 1058, THE PROPELLER GENESEE CHIEF v. FITZHUGH.

Syl. 2 (V, 114). Limits of admiralty jurisdiction.

Approved in Arnold v. Eastin, 116 Ky. 699, 76 S. W. 856, where home port of vessel was in Indiana, recording of mortgage thereon in Kentucky is not constructive notice to creditors.

Distinguished in Cleveland etc. Ry. Co. v. Druien, 118 Ky. 247, 80 S. W. 780, where carrier contracted in Illinois to carry freight into Kentucky, and that it should not be liable for loss by fire, such limitation being valid in Illinois but void here, and cargo burned in Illinois, limitation of liability in contract was good defense in suit in Kentucky.

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V, 121). Collision—Necessity for lookout.

ed in Klutt v. Philadelphia etc. Ry. Co., 142 Fed. 396, ng liable for running down decedent who was in rowboat where tug had no lookout; Brigham v. Luckenback, 140 Fed. ng tug liable for collision with sailing vessel where tug oper lookout, though tug's wheel jammed; The Tarpon, 132 applying rule where steamer collided with drifting scow; tless, 129 Fed. 722, 64 C. C. A. 243, holding steamer in collision in river with two launches made fast together in nches sunk.

(V, 123). Collision—Duty of steamer passing ship.

ed in The Dauntless, 129 Fed. 723, 64 C. C. A. 243, holding n fault for collision in river with two launches made fast n which launches sunk.

66-472, 13 L. 1068, FRETZ v. BULL.

V, 125). Admiralty—Who must be libelant.

ed in The Trader, 129 Fed. 472, mere volunteer to whom r damages by collision have been assigned solely for pur- it cannot prosecute such claims in admiralty.

72-598, 13 L. 1071, GAINES v. RELF.

V, 126). Confession of bigamy to show marriage void.

ed in Bowman v. Little, 101 Md. 293, 61 Atl. 227, evidence ntiff and deceased lived together at house of plaintiff's ring day, and at hotel at night, for less than week, and er visited them at house of ill-fame, where they were liv- ner, is inadmissible to impugn validity of subsequent mar- veen parties.

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XIII HOWARD.

13 How. 40-52, 14 L. 42, UNITED STATES v. FERREIRA.

Syl. 1 (V, 133). Award by claims commissioner—Judicial powers.

Approved in American etc. Min. Co. v. Brennan, 20 Colo. App. 447, 79 Pac. 752, Mills' Ann. St., § 3637, authorizing land commissioners to cancel lease obtained by fraud, is not void as conferring judicial power.

13 How. 54-56, 14 L. 48, BARROW v. HILL.

(V, 136.) Miscellaneous. Cited in Barber Asphalt etc. Co. v. Morris, 132 Fed. 956, 67 L. R. A. 761, 66 C. C. A. 55, upholding grant of mandamus by circuit court of appeals commanding circuit judge to vacate order staying proceedings in suit therein or claim against city pending appeals in state court.

13 How. 57-70, 14 L. 49, BRADFORD v. UNION BANK OF TENNESSEE.

Syl. 3 (V, 137). Reformation of title bond to conform to intention.

Approved in Marshall v. Homier, 13 Okl. 275, 74 Pac. 371, action lies by grantor to reform deed where by agreement growing crops were to be reserved and such resevation is omitted by mutual mistake.

13 How. 71-92, 14 L. 55, RICHMOND ETC. R. R. CO. v. LOUISIANA R. R. CO.

Syl. 3 (V, 140). Public grants construed in public's favor.

Approved in Knoxville Water Co. v. Knoxville, 200 U. S. 35, 50 L. 359, 26 Sup. Ct. 224, establishment of municipal authority under subsequent legislative authority does not impair prior exclusive franchise granted to water company; Wheelwright v. Commonwealth, 103 Va. 517, 49 S. E. 649, reciting history of litigation.

13 How. 101-115, 14 L. 68, WILLIAMSON v. BARRETT.

Syl. 2 (V, 145). Negligence not excused by other's negligence.

Approved in Metropolitan etc. Ry. Co. v. Arnold, 67 Kan. 264, 72 Pac. 858, applying rule where, though decedent was negligent in going on tracks, yet motorman could have avoided accident by exercise of proper care.

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(V, 145). Collision—Value of charter as damages.

ved in The Loch Trool, 150 Fed. 430, denying demurrage where had two other seaworthy vessels laid up and repairs on in-ip not commenced until seven months after accident; The tar, 140 Fed. 264, allowing demurrage as damages for col-'he Cumberland, 135 Fed. 236, where, at instance of claim- of repairing vessel injured in collision is adopted as meas-amages to libelant, claimant may recover demurrage for loss time of sale where she was sold before repairs could have npleted.

115-150, 14 L. 75, MITCHELL v. HARMONY.

(V, 147). Federal court follows state practice.

ved in Pittsburgh Ry. Co. v. Bloomer, 146 Fed. 721, uphold-uction in action against street railway for injury to passen-being thrown by sudden starting of car.

(V, 150). Superior's order no defense to officer's trespass.

ved in Saxlehner v. Eisner, 140 Fed. 941, holding executive f corporation jointly liable with it for infringement of trade-'Reilly De Camara v. Brooke, 135 Fed. 387, holding military of Cuba personally liable for deprivation of franchise to slaughter-house in Havana, granted under Spanish law, Am. St. Rep. 727, note.

guished in Glucose etc. Co. v. St. Louis etc. Co., 135 Fed. ident of solvent corporation cannot be joined with corpora-lefendant in bill for injunction and accounting for infringe-patent by corporation.

(V, 151). Jurisdiction over trespass in foreign country.

ved in dissenting opinion in Slater v. Mexican National ., 194 U. S. 134, 48 L. 906, 24 Sup. Ct. 581, majority deny-ral court's jurisdiction over action founded on liability for wrongful act created by Mexican laws.

150-173, 14 L. 91, BUCKINGHAM v. McLEAN.

(V, 152). General appearance waives service of citation on

ved in dissenting opinion in Fisher v. Crowley, 57 W. Va. S. E. 428, majority holding material defect in summons in record with respect to time or place of return is not waived ling to merits after overruling motion to quash, to which taken.

(V, 153). Insolvency defined.

ved in Regina Music Box Co. v. Otto, 65 N. J. Eq. 587, 56 where corporation borrows money on mortgages and knows it fails to secure loan it may suspend business, it does not ate insolvency within meaning of P. L. 1896, p. 298, § 64.

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13 How. 183-190, 14 L. 105, COFFEE v. PLANTER'S BANK OF TENNESSEE.

Syl. 1 (V, 157). Federal suit by assignee of note.

Approved in Utah-Nevada Co. v. De Lamar, 133 Fed. 122, 66 C. C. A. 179, federal court has no jurisdiction over suit by assignee of oral contract to recover money due thereon unless record shows assignor could have sued therein.

13 How. 190-198, 14 L. 108, WEEMS v. GEORGE.

Syl. 4 (V, 158). Erroneous rulings on evidence—Trial to court.

Approved in Streeter v. Sanitary Dist. of Chicago, 133 Fed. 131, 66 C. C. A. 190, refusing to reverse for improper admission of evidence where case tried to the court.

13 How. 198-212, 14 L. 111, LORD v. GODDARD.

Syl. 1 (V, 158). Deceit—Fraudulent intent necessary.

Approved in Pittsburgh Life etc. Co. v. Northern etc. Ins. Co., 148 Fed. 675, affirming 140 Fed. 892, holding fact that written statement of officers of insurance company in negotiating sale of business were incorrect as to premiums collected and sums due from agents, does not support action for deceit, where statements prepared by employees for company's own use; Kimber v. Young, 137 Fed. 748, 70 C. C. A. 178, applying rule in action for deceit in sale of corporate bonds where defendant stated he knew bonds were good and would be paid at maturity; Spead v. Tomlinson, 73 N. H. 61, 59 Atl. 380, holding patient submitting to treatment by Christian Science healer cannot recover for deceit based on statements that he could cure her.

13 How. 250-261, 14 L. 133, GLENN v. UNITED STATES.

Syl. 1 (V, 163). Private survey not evidence.

Approved in United States v. Montana Lumber etc. Co., 196 U. S. 578, 49 L. 605, 25 Sup. Ct. 367, private survey is inadmissible to show that land from which timber cut will be, when surveyed, within railroad grant.

13 How. 268-273, 14 L. 140, NEVES v. SCOTT.

Syl. 1 (V, 165). Federal equity independent of state law.

Approved in James v. Gray, 131 Fed. 408, 413, 65 C. C. A. 385, loan made by wife to husband from separate estate is provable against his bankrupt estate, irrespective of its enforceability under state law.

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274-283, 14 L. 143, DE FOREST v. LAWRENCE.

(V, 166). Tariff—Effect of commercial designation.

ed in Brennan v. United States, 136 Fed. 746, 747, 69 C. 5, limes in brine are not dutiable as "limes" under tariff 97, but as "fruits in brine."

307-344, 14 L. 157, PHILADELPHIA ETC. R. R. Co. v. ARD.

(V, 169). Consolidation of corporations—Estoppel.

ed in Wisconsin Lumber Co. v. Greene etc. Tel. Co., 127 5, 109 Am. St. Rep. 387, 101 N. W. 744, 69 L. R. A. 968, on which in return for stock subscriptions agreed to give ers certain privileges is estopped to deny its officers au- make contracts.

(V, 170). Deposition of witness at former trial.

ed in Toledo Traction Co. v. Cameron, 137 Fed. 60, 69 C. admitting testimony of witness given on former trial where s without district and more than one hundred miles from trial.

(V, 170). Estoppel to deny covenant maintained in prior

ed in Long v. Lockman, 135 Fed. 199, where decedent had rn plea to jurisdiction to involuntary bankruptcy proceed- Arkansas, alleging residence in Colorado, and proceedings , bankrupt's administrators are estopped in bankruptcy gs commenced in Colorado from denying his Colorado resi- Iorrison v. Atkinson, 16 Okl. 575, 85 Pac. 473, where party l to district court asked dismissal because of failure of op- o comply with rule as to deposit for costs, he cannot, on om district court, claim invalidity of rule; dissenting opin- ones v. Stoddart, 8 Idaho, 227, 67 Pac. 655, majority hold- not error to refuse evidence of assignment of mortgage se- te, where answer denies title to owner.

(V, 174). Damages for breach of contract—Profits.

ed in Hadley Dean Plate Glass Co. v. Highland Glass Co., 244, applying rule in action for breach of contract for ure and delivery of glass; In re Saxton Furnace Co., 142 , where bankrupt repudiated contract for purchase of ma- seller could prove claim against bankrupt estate for profit Choctaw etc. R. R. Co. v. Jacobs, 15 Okl. 500, 82 Pac. 504, right to commissions lost by reason of unreasonable delay ent of goods where carrier's agent had no means of know- equences; Tootle v. Kent, 12 Okl. 692, 73 Pac. 315, apply- where merchant's store closed by virtue of wrongful and t chattel mortgage; Chisholm etc. Mfg. Co. v. U. S. Canopy

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Co., 11 Tenn. 211, 77 S. W. 1064, applying rule where patent brackets contracted to be manufactured were improperly made and were useless.

13 How. 345-362, 14 L. 173, VERY v. LEVY.

Syl. 3 (V, 178). Accord and satisfaction—Receipt of goods.

Approved in San Juan v. St. John's Gas Co., 195 U. S. 521, 49 L. 305, 25 Sup. Ct. 108, accord and satisfaction results from receipt under protest, in discharge of particular payment, of different money medium from that which was required by contract.

Syl. 5 (V, 178). Fraud must be alleged.

Approved in Cella v. Brown, 144 Fed. 754, mere allegation that plan of reorganization between street railways was fraudulently designed, without charging companies participated therein, is insufficient.

13 How. 363-373, 14 L. 181, DAY v. WOODWORTH.

Syl. 3 (V, 179). Exemplary damages, when allowed.

Approved in Otto Kuehne Pres. Co. v. Allen, 148 Fed. 669, exemplary damages for death by wrongful act are allowable to heirs under Rev. St. Mo. 1899, § 2866, only where deceased could have recovered them had he lived; Western Union Tel. Co. v. Cashman, 132 Fed. 806, 65 C. C. A. 607, denying punitive damages in action against telegraph company for transmission and delivery of libelous message; Murray v. Pannaci, 130 Fed. 531, 65 C. C. A. 153, denying right to exemplary damages for removing sand from beach in front of and upon plaintiff's lot; Louisville etc. R. R. Co. v. Satterwhite, 112 Tenn. 211, 79 S. W. 112, in action for negligent death, instruction that if negligence was given jury should make proper additions by way of punitive damages, is erroneous. See 101 Am. St. Rep. 736, note.

Syl. 4 (V, 182). Counsel fees as damages.

Approved in Lindeberg v. Howard, 146 Fed. 470, in action on injunction bond, attorney's fees expended in obtaining dissolution of injunction not proper element of damage; Hanna v. Sweeney, 78 Conn. 493, 62 Atl. 785, in action for assault it is error to instruct that jury may assess punitive damages in favor of plaintiff according to their discretion; Frantz v. Saylor, 12 Okl. 43, 69 Pac. 796, in action on injunction bond expense of removing improvements, harvesting crops, and injury to pasture are not elements of damage.

13 How. 381-429, 14 L. 189, HOWARD v. INGERSOLL.

(V, 184.) Miscellaneous. Cited in Dodge Co. v. Saunders Co., 76 Neb. 447, 97 N. W. 619, construing Comp. St. 1901, c. 78, § 87, relating to streams which divide counties.

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Syl. 4 (V, 185). Navigable stream as boundary.

Approved in Peoria v. Central Nat. Bank, 224 Ill. 54, 79 N. E. 298, water's edge, and not surveyed meander line, is shore line from which lines should be drawn to show water on accretion rights of adjacent riparian owners.

Syl. 8 (V, 186). Riparian owners' right to use of stream.

Approved in Meng v. Coffee, 67 Neb. 503, 108 Am. St. Rep. 700, 93 N. W. 714, riparian owner cannot, for irrigation purposes, consume whole of water of stream to detriment of other owners.

Syl. 9 (V, 186). Banks and bed of river defined.

Cited in Harrison v. Fite, 148 Fed. 783, arguendo.

13 How. 429-441, 14 L. 210, NORRIS v. CROCKER.

Syl. 2 (V, 187). Statutes—Repeals by implication.

Approved in Sena v. United States, 147 Fed. 488, repeal of New Mexico statute relating to appeals, without saving clause, before hearing of pending appeal, did not deprive supreme court of jurisdiction; Atwood v. Buckingham, 78 Conn. 425, 428, 62 Atl. 617, 618, upholding Act 1905, fixing penalty at $1, in all pending suits under prior statute, for penalty for administrator's failure to file inventory; Pensacola etc. R. R. Co. v. State, 45 Fla. 89, 110 Am. St. Rep. 69, 33 So. 986, where pending appeal from judgment rendered under statute prescribing penalty for charging of excessive rates by carrier, statute was repealed, judgment cannot be enforced; State v. Lee, 28 Nev. 390, 82 Pac. 230, Comp. Laws, § 1542, regulating practice of medicine and authorizing issuance of temporary licenses, was wholly repealed by Stat. 1905, p. 87, c. 63; Bray v. Williams, 137 N. C. 391, 49 S. E. 888, where defendant liable to penalty under statute for failure to record marriage license, subsequent statute releasing him from liability is valid.

Syl. 3 (V, 189). Repeals—Vested rights in unenforced penalty.

Approved in Atwood v. Buckingham, 78 Conn. 427, 62 Atl. 618, act of 1905, fixing penalty in pending suits for penalty for administrator's failure to file inventory as provided by prior act, is valid though retroactive; United States v. Sena, 12 N. M. 414, 78 Pac. 62, repeal of Laws 1901, p. 190, c. 99, deprived supreme court of jurisdiction over criminal appeals not taken during term at which judgment rendered.

13 How. 447-458, 14 L. 217, McAFEE v. CROFFORD.

Syl. 5 (V, 192). Elements of damages for trespass.

Approved in Enlow v. Hawkins, 71 Kan. 636, 81 Pac. 190, where shocked corn is purchased to feed cattle and it is destroyed by vendor at time when such food cannot be obtained in vicinity, wrongdoer is liable for loss in weight sustained by cattle through

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change of food; dissenting opinion in Lesch v. Great Northern Ry. Co., 97 Minn. 508, 106 N. W. 957, majority upholding damages for fright caused by wrongful acts of defendant's employees.

13 How. 458-468, 14 L. 223, HILL v. TUCKER.

Syl. 2 (V, 194). Judgment against executor bars coexecutor.

Approved in Coram v. Ingersoll, 148 Fed. 174, judgment against ancillary administrator on chose of action bars suit by ancillary administrator in another state on same cause of action.

13 How. 469-472, 14 L. 227, GOODALL v. TUCKER.

Syl. 1 (V, 195). Judgment against executor bars coexecutor.

Approved in Coram v. Ingersoll, 148 Fed. 174, judgment against ancillary administrator on chose in action bars suit by ancillary administrator in another state on same cause of action.

13 How. 472-478, 14 L. 228, PILLOW v. ROBERTS.

Syl. 3 (V, 195). Statutes—Tax deeds presumptive of legal sale.

Approved in Low Foon Yin v. United States etc. Commr., 145 Fed. 796, upholding Chinese Exclusion Act authorizing government to secure Chinese as witness against himself in proceedings for deportation for not having certificate; O'Keefe v. Dillenbeck, 15 Okl. 445, 83 Pac. 542, upholding title held under tax deeds. See 108 Am. St. Rep. 554, note.

Syl. 4 (V, 196). Adverse possession—Color of title.

Approved in Tyee Consol. Min. Co. v. Langstedt, 136 Fed. 128, 69 C. C. A. 548, while title to public land was in United States, there is no disseisin sufficient to start limitations as against locator of mining claim, prior to issuance of patent to him; Corkran Oil etc. Co. v. Arnaudet, 111 La. 586, 35 So. 756, determining right to land by one holding under tax deed after adoption of constitution; O'Keefe v. Dillenbeck, 15 Okl. 446, 83 Pac. 543, upholding title held under tax deeds.

13 How. 478-487, 14 L. 231, UNITED STATES v. HODGE.

Syl. 1 (V, 200). Treasury transcripts as evidence.

Approved in United States v. Pierson, 145 Fed. 818, admitting treasury transcript in action on Indian agent's bond, though it contained items concerning which it was not competent evidence.

13 How. 488-498, 14 L. 235, LAWRENCE v. CASWELL.

Syl. 1 (V, 201). Tariff—Ad valorem not charged on leakage.

Approved in United States v. Shaw, 144 Fed. 332, under Comp. St. 1901, p. 1655, no allowance can be made for leakage of wine in transit.

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13 How. 518-628, 14 L. 249, PENNSYLVANIA v. WHEELING ETC. BRIDGE CO.

Syl. 2 (V, 204). Supreme court's original jurisdiction—State's suit.

Approved in Louisiana v. Mississippi, 202 U. S. 36, 50 L. 925, 26 Sup. Ct. 408, upholding original jurisdiction over suit between Louisiana and Mississippi arising out of enforcement of oyster laws, involving dispute as to boundary; Missouri v. Illinois, 200 U. S. 518, 50 L. 578, 26 Sup. Ct. 268, refusing to enjoin discharge into Mississippi river, through drainage canal, of Chicago sewage on complaint of Missouri.

Syl. 7 (V, 620). Equity—Irreparable injury.

Approved in Sutter v. Hickman, 1 Alaska, 195, protecting, by injunction, riparian owner's right to erect wharves and land fish nets on tide flats.

Syl. 8 (V, 207). Commerce—Ohio river is navigable.

Approved in State v. Faudre, 54 W. Va. 127, 132, 102 Am. St. Rep. 927, 46 S. E. 271, 272, 63 L. R. A. 877, West Virginia cannot permit one who, under Ohio ferry franchise, charges passenger across Ohio river more than allowed by West Virginia laws.

Distinguished in Kansas City etc. R. R. Co. v. Wiygul, 82 Miss. 227, 230, 33 So. 966, 967, 61 L. R. A. 578, upholding right of railroad maintaining bridge over navigable stream under state grant to repair it.

Syl. 9 (V, 209). States cannot hinder federal license.

Approved in Missouri v. Illinois, 200 U. S. 519, 50 L. 578, 26 Sup. Ct. 268, refusing to enjoin discharge into Mississippi river, through drainage canal, of Chicago sewage, on complaint of Missouri.

Syl. 10 (V, 209). When public nuisance becomes private.

Approved in Crookston Waterworks etc. Co. v. Sprague, 91 Minn. 468, 98 N. W. 349, 64 L. R. A. 977, holding dam erected over nagigable river not nuisance.

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14 How. 13-22, 14 L. 306, MOORE v. ILLINOIS.

Syl. 1 (V, 213). Police powers—Fugitive slave laws.

Approved in Louisville v. Wehmhoff, 76 S. W. 881, 116 Ky. 830, under Ky. St. 1899, §§ 2742, 2782, city of first class may pass ordinance prohibiting poolrooms.

Syl. 3 (V, 213). Offenses against two jurisdictions.

See 110 Am. St. Rep. 153, note.

(V, 213.) Miscellaneous. Cited in Cruthers v. State, 161 Ind. 147, 67 N. E. 933, under Burns' Rev. St. 1901, § 1645, punishing abetting in perpetration of offense in another state, information charging abetting offense of bunko steering is insufficient in absence of allegation that acts constituted offense in Illinois.

14 How. 24-25, 14 L. 311, EX PARTE MANY.

Syl. 1 (V, 216). Mandamus to compel decision.

See 98 Am. St. Rep. 896, note.

14 How. 29-38, 14 L. 312, HAGAN v. WALKER.

Syl. 1 (V, 218). Equity—Creditor's bill against administrator.

Approved in Schurmeier v. Connecticut etc. Ins. Co., 137 Fed. 47, 69 C. C. A. 22, upholding federal jurisdiction over suit to permit presentation of and to allow claims against estates of decedents for good cause shown, after time limited by order of probate court and within eighteen months allowed by state statute.

Distinguished in Ganow v. Denny, 68 Neb. 709, 94 N. W. 960, suit in equity will not lie to restrain solvent party from trespassing on personalty or from mere oral assertion of title thereto.

Syl. 3 (V, 219). Suit against administrator and debtor.

Approved in Reager v. Chappelear, 104 Va. 17, 51 S. E. 171, upholding suit by distributee against administrator and debtor of estate when both are necessary parties for settlement of estate and each was indebted to estate, and administrator had not charged own debt nor attempted to collect debtor's.

Syl. 6 (V, 220). Prior encumbrance as party.

Approved in Boatmen's Bank v. Fritzlen, 135 Fed. 660, 68 C. C. A. 288, determining existence of separate causes of action in bill, within 24 Stat. 552, § 2, and 25 Stat. 433, c. 866.

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14 How. 52-69, 14 L. 322, WISWALL v. SAMPSON.

Syl. 1 (V, 224). Custodia legis—Protection of prior liens.

Approved in Johnson v. Southern B. & L. Assn., 132 Fed. 542, 543, tax deed executed after property is in hands of receiver for mortgagee is void.

Syl. 4 (V, 224). Receiver represented party entitled to property.

Approved in In re Jno. L. Nelson & Bro. Co., 149 Fed. 594, where bankruptcy proceedings are terminated because bankrupt not subject to bankruptcy law, attachments levied after order of dismissal are not prior to those levied prior to such order; Detroit etc. R. R. Co. v. Campbell, 140 Mich. 390, 103 N. W. 859, existence of receivership under creditor's bill does not devest corporation of right to condemn land for right of way.

Syl. 8 (V, 226). Purchaser pendente lite buys at peril.

Distinguished in Ingraham v. National Salt Co., 139 Fed. 688, 689, where realty attached in federal suit and under subsequent state insolvency proceedings receiver took and sold property, and thereafter under federal judgment marshal advertised sale of land, federal court will not enjoin receiver from proceeding in state court injunction proceedings against marshal.

Syl. 12 (V, 227). Property in receiver's hands not executable.

Approved in In re Jno. L. Nelson & Bro. Co., 149 Fed. 592, where ancillary receiver properly appointed in bankruptcy, property in his hands as such receiver was not attachable.

Distinguished in Ingraham v. National Salt Co., 139 Fed. 687, 688, 690, where realty was attached in federal suit, and pending suit insolvency proceedings commenced in state court, whose receiver took property and sold it, and thereafter, under federal judgment, marshal advertised sale of land, which sale was enjoined by state court, federal court would not enjoin receiver from attacking attachment; People v. Finch, 19 Colo. 519, 520, 76 Pac. 1123, under Mills' Ann. Stats., §§ 2583, 2585, requiring recording of levy of execution on land in another county, no lien acquired by levy, where certificate was filed after appointment of receiver for execution debtor; Beardslee v. Ingraham, 183 N. Y. 420, 421, 422, 76 N. E. 478, 479, where, after federal attachment, state suit commenced for dissolution of defendant corporation and receiver appointed to sell property, state court could not enjoin United States marshal from selling property under execution.

14 How. 70-76, 14 L. 330, SAMPLE v. BARNES.

Syl. 1 (V, 232). Equitable relief—Judgment on void contract.

Approved in Phelan v. Wilson, 114 La. 822, 38 So. 573, where grantor deeded land to trustee for him to sell and pay grantor's

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debts, and property was sold, and later grantor sold same property to another, latter cannot attack sale to first vendee on ground of illegality of consideration.

14 How. 80-103, 14 L. 335, RUNDLE v. DELAWARE ETC. CANAL CO.

Syl. 2 (V, 234). Riparian owner's rights in river forming boundary.

Approved in Franzini v. Layland, 120 Wis. 82, 97 N. W. 503, where river separates two states, title of riparian owner goes to boundary line regardless of center of stream.

14 How. 193-218, 14 L. 383, TROY IRON AND NAIL FACTORY v. CORNING.

Syl. 2 (V, 242). Patents—License not assignable.

Approved in Bowers v. Lake Superior etc. Co., 149 Fed. 986, where licensee of right to use patented invention in connection with dredge sold dredge to defendant, latter was liable for royalties; Shepherd v. Deitsch, 138 Fed. 84, licensee of right to manufacture and vend patented article is not necessary party complainant to infringement suit.

14 How. 268-282, 14 L. 416, TRUSTEES FOR VINCENNES UNIVERSITY v. INDIANA.

Syl. 7 (V, 248). Incorporated trustees as private corporation.

Cited in Ex parte Riggins, 134 Fed. 418, arguendo.

14 How. 282-296, 14 L. 422, CHRISTY v. SCOTT.

Syl. 2 (V, 249). Ejectment—Plaintiff recovers on own title.

Approved in Lasswell v. Kitt, 11 N. M. 463, 70 Pac. 562, and Rhule v. Seaboard Air Line Ry. Co., 102 Va. 346, 46 S. E. 331, both following rule; Cullen v. Bowen, 36 Wash. 668, 79 Pac. 305, admitting will in evidence in suit for damages for destruction of property where plaintiff claimed title under will, and testator's children had never contested it; McBride v. Steinweden, 72 Kan. 511, 83 Pac. 823, arguendo.

14 How. 328-334, 14 L. 441, PERKINS v. FOURNIQUET.

Syl. 1 (V, 252). Interlocutory order for accounting—Release.

See 98 Am. St. Rep. 905, note.

14 How. 334-346, 14 L. 444, HARRIS v. HARDEMAN.

Syl. 2 (V, 254). Judgment without service is void.

Approved in King v. Davis, 137 Fed. 208, under Code Va. 1887, § 3207, return showing service by leaving copy with defendant's wife, but not stating that she was member of his family, is bad.

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Syl. 3 (V, 256). Correction of irregularities by motion.

Approved in King v. Davis, 137 Fed. 230, arguendo.

Syl. 4 (V, 257). Process—Constructive service—Return.

Approved in King v. Davis, 137 Fed. 206, under Code Va., § 3207, return showing service by posting up and leaving on "the door" instead of on the "front door" of defendant's usual dwelling, is void.

14 How. 368-376, 14 L. 459, PEALE v. PHIPPS.

Syl. 2 (V, 261). State receiver not suable in federal court.

Approved in Johnson v. Southern B. & L. Assn., 132 Fed. 543, deed executed after property has passed into custody of court by its appointment of receiver for mortgagee is void; Schwartz v. Gerhardt, 44 Or. 428, 75 Pac. 699, trustee appointed by foreign court cannot be compelled to account by court of another jurisdiction though he reside there.

Distinguished in Isom v. Rex Crude Oil Co., 147 Cal. 667, 82 Pac. 320, where federal suit brought against assignee of lease alone to cancel same, when property was in hands of state court receiver, federal court had jurisdiction though no leave to sue obtained from state court.

14 How. 377-390, 14 L. 462, CUNNINGHAM v. ASHLEY.

Syl. 8 (V, 205). Land department controversy as federal question.

Approved in Le Marchel v. Teegarden, 133 Fed. 827, party attacking patent for mistake of fact must plead and prove evidence before department from which mistake resulted, the particular mistake and the way in which it occurred.

14 How. 400-434, 14 L. 472, ENNIS v. SMITH.

Syl. 12 (V, 270). Proof of foreign law.

See 113 Am. St. Rep. 881, note.

14 How. 434-446, 14 L. 487, WINDER v. CALDWELL.

Syl. 1 (V, 271). Nature of scire facias.

Approved in Hollister v. United States, 145 Fed. 779, defendants on scire facias on forfeited bond in which government sought to recover $1,000 were entitled to jury; Kirk v. United States, 131 Fed. 334, where scire facias is issued against bail, execution cannot be awarded against defendant not personally served until after two returns nihil to writ.

Syl. 3 (V, 271). Failure of consideration as defense to contract.

Approved in Williams v. Neely, 134 Fed. 6, 69 L. R. A. 232, 67 C. C. A. 171, partial failure of consideration resulting from defect of title is good defense to action on purchase money note, where

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vendor covenanted against encumbrances; Tenney v. Anderson etc. Power Co., 69 S. C. 433, 48 S. E. 458, in proceeding to enforce mechanic's lien, liquidated damages provided for in contract for delay in completion, defects in work and damage to work caused by abandonment by builder, may be set off against builder's claim.

Syl. 4 (V, 272). Mechanic's lien by contractor.

Approved in Evans etc. Co. v. International etc. Co., 101 Md. 221, 109 Am. St. Rep. 576, 60 Atl. 671, subcontractor under contract with principal contractor to furnish materials and labor for building for lump sum cannot enforce lien for labor given by Acts 1898, p. 1169, c. 502; Moore v. Industrial Co., 138 N. C. 307, 50 S. E. 688, superintendent of mill is not laborer within mechanic's lien law.

14 How. 446-463, 14 L. 493, SALMON FALLS ETC. CO. v. GODDARD.

Syl. 3 (V, 273). Contract may be shown to be as agent.

Approved in Ismon v. Loder, 135 Mich. 351, 97 N. W. 771, signature of president and secretary having appended to each, respectively, words "Pres.," "Sec.," operates as conveyance of corporation's realty; Usher v. Daniels, 73 N. H. 208, 60 Atl. 747, where memorandum of sale signed by plaintiff's agent in own name, parol evidence is admissible to show plaintiff is real party in interest.

Syl. 4 (V, 274). Partner may charge firm.

Approved in Gardiner v. McDonogh, 147 Cal. 320, 81 Pac. 966, admitting parol to show that terms "Bayo" and "per 100" in contract meant Bayou beans and per hundred pounds.

Syl. 5 (V, 274). Statute of frauds—Parol to explain memorandum.

Approved in Dunn v. Mayo Mills, 134 Fed. 806, 67 C. C. A. 450, fact that writing evidencing sale was signed by surname of buyer so as to render necessary parol evidence to identify buyer as partner in defendant firm does not render parol evidence admissible to vary contract.

14 How. 468-488, 14 L. 502, PHILADELPHIA ETC. R. R. CO. v. DERBY.

Syl. 2 (V, 277). Guest entitled to safe carriage.

Approved in Indianapolis etc. Co. v. Lawson, 143 Fed. 836, applying principle where electric railway offered free use of three cars to take members of convention for ride; The Oregon, 133 Fed. 618, 68 C. C. A. 603, whether carrier of passengers by sea was seaworthy at beginning of voyage is immaterial in suit by passenger for injuries; Indianapolis St. Ry. Co. v. Schmidt, 163 Ind. 365, 71 N. E. 202, complaint alleging that defendant ran car at dangerous speed into switch, off track and against pole, and throwing plain-

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tiff against stove, shows defendant's negligence was proximate cause; Goldsmith v. Holland Building Co., 182 Mo. 606, 81 S. W. 1115, applying rule to elevator passenger; McNeill v. Railroad Co., 135 N. C. 694, 699, 700, 701, 47 S. E. 770, 771, 772, 67 L. R. A. 227, holding carrier liable for negligence causing injuries to passenger riding on pass irrespective of statutes penalizing carrier for discrimination in rates; Mannon v. Camden etc. Ry. Co., 56 W. Va. 556, 49 S. E. 451, frequent breaking of old trolley wire near given point justifies finding of negligence against street railway; Williams v. Spokane Falls etc. Ry. Co., 39 Wash. 88, 89, 80 Pac. 1102, 1103, upholding instruction that it was carrier's duty to carry postal clerk safely so far as human care and skill would enable it to be done.

Syl. 3 (V, 280). Master's liability for acts of employee.

Approved in Slater v. Advance Thresher Co., 97 Minn. 313, 107 N. W. 136, where master furnished state agent with automobile for use in business, and after business hours agent took auto into another state for pleasure trip, master not liable for injuries caused by negligent operation of machine by agent; Barmore v. Vicksburg etc. Ry. Co., 85 Miss. 452, 454, 38 So. 215, 216, 70 L. R. A. 627, holding where railroad employee, using tricycle in performance of duties, injured plaintiff on returning from errand for friend to employment, railroad is liable; Gillespie v. Brooklyn Heights R. R. Co., 178 N. Y. 357, 102 Am. St. Rep. 503, 70 N. E. 860, 66 L. R. A. 618, street railway is liable to passenger for injury to feelings of passenger because of insulting language used by conductor.

Distinguished in Brenner v. Ford, 116 La. 553, 40 So. 895, holding master not liable for killing of person by being run over by horse recklessly driven by employee contrary to private orders.

14 How. 488-505, 14 L. 510, WEBSTER v. COOPER.

Syl. 1 (V, 284). Devise to trustee with remainder over.

Approved in Lewis v. Curnutt, 130 Iowa, 432, 106 N. W. 918, under conveyance to trustee by warranty deed in consideration of trust created under instrument providing that trustee take title from and after grantor's death, trustee's authority not limited.

Syl. 7 (V, 285). When adverse possession starts.

Approved in Lamb v. Powder River etc. Co., 132 Fed. 436, 67 L. R. A. 558, 65 C. C. A. 570, construing Colo. Sess. Laws, p. 248, c. 113, relating to limitation of actions on foreign judgments as applying to judgments rendered prior to passage. See 111 Am. St. Rep. 461, note.

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14 How. 505-511, 14 L. 518, SHEPPARD v. GRAVES.

Syl. 3 (V, 287). Objections to jurisdiction pleadable in abatement.

Approved in Steigleder v. McQuesten, 198 U. S. 142, 49 L. 987, 25 Sup. Ct. 616, question of federal jurisdiction because of lack of diverse citizenship may be raised by motion to dismiss based on proofs taken before master.

Distinguished in Yocum v. Parker, 130 Fed. 771, 66 C. C. A. 80, federal court has no jurisdiction of action at law where answer contains general denial, which under state practice puts in issue jurisdictional allegations.

Syl. 4 (V, 288). Federal jurisdiction—Burden of proof.

Approved in Daley v. Iselin, 212 Pa. St. 285, 61 Atl. 920, on trial of plea to jurisdiction, burden is on defendant to establish defective service of summons alleged.

14 How. 512, 513, 14 L. 309, SHEPPARD v. GRAVES.

Syl. 2 (V, 289). General issue waives plea in abatement.

Approved in McFadden v. Heisen, 150 Fed. 570, agreement to dismiss pending suit is waived by answering amended bill on merits.

14 How. 528-532, 14 L. 528, STEPHENS v. CADY.

Syl. 1 (V, 291). Rights of copyright purchaser of copper plate.

Approved in Bobbs-Merrill Co. v. Straus, 147 Fed. 18, 20, notice in copyrighted book as to retail price and that no one licensed to sell for less does not entitle owner of copyright to injunction against resale at less price; Werckmeister v. American Lith. Co., 142 Fed. 834, copyright of painting is not invalidated by fact that notice of copyright is not inscribed on original painting; Werchmeister v. American Lith. Co., 134 Fed. 324, 326, 68 L. R. A. 591, exhibition of copyrighted painting at academy at which no one was permitted to copy same, and to which public was not admitted except on payment of fee, was not publication as to avoid copyright.

Syl. 3 (V, 291). Execution sale of copper plate passes title.

Approved in In re Hurlbutt, 135 Fed. 507, 68 C. C. A. 216, title to seat in stock exchange held by firm passes to its trustee in bankruptcy.

14 How. 539-563, 14 L. 532, BLOOMER v. McQUEWAN.

Syl. 3 (V, 294). Assignment of patents—Extension of time.

Approved in Paulus v. Buck Mfg. Co., 129 Fed. 595, 64 C. C. A. 162, owner of undivided part of all rights secured by patent may, without consent of co-owners, grant valid license to use monopoly secured by it.

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Syl. 5 (V, 294). Patents—Taxation of machine in purchaser's hands.

Approved in Hartman v. Park & Sons Co., 145 Fed. 363, determining right to restrict future sales of Peruna.

Syl. 6 (V, 295). Extension of patent—Rights of licensee.

Approved in Wagner Typewriter Co. v. Webster Co., 144 Fed. 410, holding use of word "Underwood" on typewriter ribbon box above name of brand not infringement of ribbons manufactured by Underwood typewriter people.

14 How. 568-575, 14 L. 545, VEAZIE v. MOOR.

Syl. 3 (V, 296). Commerce power does not affect locals.

Approved in Howard v. Illinois C. R. Co., 148 Fed. 999, holding void act of Congress of 1906, relating to carrier's liability to employees; Globe Elevator Co. v. Andrew, 144 Fed. 883, 884, holding void Wis. Laws. 1905, p. 37, c. 19, as amended in 1905, relating to weighing and inspection of grain at Superior, as applied to interstate shipments.

14 How. 584-586, 14 L. 552, WALKER v. ROBBINS.

Syl. 1 (V, 298). Equitable relief against judgment.

Approved in King v. Davis, 137 Fed. 228, 229, federal law court cannot vacate judgment of former term founded on false but apparenty valid return of service of process; Graham v. Loh, 32 Ind. App. 187, 69 N. E. 476, action to vacate judgment because of fraudulent return of officer serving summons cannot be maintained where holder of judgment not implicated; Smoot v. Judd, 184 Mo. 520, 521, 536, 550, 552, 568, 83 S. W. 485, 490, 495, 496, 501, refusing to set aside default judgment and execution sale thereunder by suit in equity based on sheriff's false return of service of summons.

Distinguished in dissenting opinion in Smoot v. Judd, 184 Mo. 595, 602, 609, 83 S. W. 512, 515, 517, majority refusing to set aside default judgment and execution sale thereunder by suit in equity based on sheriff's false return of service of summons.

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XV HOWARD.

15 How. 42-62, 14 L. 592, EYRE v. POTTER.

Syl. 1 (V, 305). Actual fraud not proven by constructive fraud.

Approved in Burk v. Johnson, 146 Fed. 211, bill to rescind contract assigning territory for promotion of burial associations under copyrighted by-laws, based on fraudulent representations, not sustained by proof of mutual mistake.

Syl. 3 (V, 305). Inadequacy of consideration not relievable in equity.

Approved in Goerz v. Barstow, 148 Fed. 575, fact that woman had dealt in suburban realty does not charge her with notice of fraud affecting grantor's title of similar property purchased because of inadequacy of price, where price was four-fifths of value of land.

15 How. 62-137, 14 L. 601, O'REILLY v. MORSE.

Syl. 6 (V, 307). American patent—Date different from foreign.

Approved in Sawyer Spindle Co. v. Carpenter, 133 Fed. 239, on expiration of foreign patent, specific invention therein claimed does not infringe broader claim of American patent, where patents granted before Comp. St. 1901, p. 3382.

Syl. 7 (V, 307). Patentable invention—Abstract principles.

Approved in Bradford v. Expanded Metal Co., 146 Fed. 987, Golding patent No. 527,242, for process of making open sheet metal, is void for want of patentable invention; Manhattan etc. Co. v. Helios-Upton Co., 135 Fed. 788, holding void Baker patent No. 684,165, for method of regulating electric circuits, as being merely for operative theory.

Distinguished in Marconi W. Tel. Co. v. De Forest W. Tel. Co., 138 Fed. 675, Marconi reissue No. 11,913, for wireless telegraphy, is void as to claim 1 and infringed as to claims 3 and 5.

Syl. 9 (V, 308). Patents—New results by means specified.

Approved in Bullock Elec. Mfg. Co. v. Crocker, 141 Fed. 110, Leonard patent No. 478,344, for system of electrical distribution, is valid; Fitch v. Spang etc. Co., 140 Fed. 293, Fitch & Shafer reissue No. 6,404, for machine for forging metallic sockets, not infringed by machine made under Blakey patent.

Syl. 12 (V, 309). Patents—No costs without disclaimer.

Distinguished in Johnson v. Foos Mfg. Co., 141 Fed. 89, 90, Rev. St., §§ 973, 4922, relating to costs in patent cases, does not apply to costs in appellate court where decree below of dismissal is found erroneous.

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Syl. 14 (V, 310). Patents—Disclaimer without delay.

Approved in Rawson etc. Co. v. Hunt Co., 147 Fed. 241, where drawings and descriptions of reissue are identical with original, validity of claims of original which are repeated in reissue not affected by invalidity of other claims.

Syl. 16 (V, 310). Patents—Change of form in nonessential parts.

Approved in O'Rourke Eng. etc. Co. v. McMullen, 150 Fed. 354, holding Barr patent No. 514,843, for air lock for caissons, void for lack of invention.

15 How. 160, 161, 14 L. 643, PHELPS v. MAYER.

Syl. 3 (V, 313). Time to except to instructions.

Approved in dissenting opinion in Owens v. United States, 130 Fed. 286, 64 C. C. A. 525, majority holding where after jury retired in criminal case defendant on following day (Sunday) handed motion for new trial, with exceptions, to judge and clerk to file following day, and judge overruled exceptions, appellate court will consider exceptions.

15 How. 162-179, 14 L. 644, BISPHAM v. PRICE.

Syl. 1 (V, 313). Award acquiesced in bars action.

Cited in Greer Co. v. Texas, 197 U. S. 241, 49 L. 738, 25 Sup. Ct. 437, arguendo.

15 How. 179, 189, 14 L. 652, BEVINS v. RAMSEY.

(V, 313.) Miscellaneous. Cited in Hixon v. Cupp, 5 Okl. 554, 49 Pac. 930, sureties on sheriff's bond not liable for exemplary damages for assault on prisoner by other prisoners.

15 How. 198-211, 14 L. 660, KANOUSE v. MARTIN.

Syl. 1 (V, 314). Federal jurisdiction—Amount in dispute.

Approved in Barber v. Boston etc. Co., 145 Fed. 52, action on case to recover $2,000 damages for negligence is not removable though actual damages are alleged to be greater; Oppenheimer v. Regan, 32 Mont. 119, 79 Pac. 698, applying principle in denying jurisdiction of justice of peace over action against sheriff to recover damages, penalty and interest.

Syl. 2 (V, 315). Filing removal petition ousts state.

Approved in Kirby v. American Soda etc. Co., 194 U. S. 146, 48 L. 913, 24 Sup. Ct. 619, upholding federal jurisdiction over cross-bill seeking to recover $1,700 due on contract where original bill, dismissed on complainant's own motion, asked for cancellation of agreement to pay $2,025.

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15 How. 212-232, 14 L. 665, BROOKS v. FISKE.

Syl. 2 (V, 317). Patents—Combination of parts to produce result.

Approved in Cimiotte Unhairing Co. v. American Fur Refining Co., 198 U. S. 414, 49 L. 1107, 25 Sup. Ct. 697, Sutton patent No. 383,258, for machine for plucking furs, not infringed by machine using movable bar for fixed stretcher bar.

15 How. 233-252, 14 L. 674, NORTHERN INDIANA R. R. CO. v. MICHIGAN CENT. R. R. CO.

Syl. 2 (V, 318). Federal jurisdiction—Local controversy.

Approved in American etc. Colony Co. v. Schuler, 34 Tex. Civ. 566, 79 S. W. 374, Texas courts cannot forfeit charter of Indiana corporation organized to operate in land in Texas.

Syl. 3 (V, 319). Equity jurisdiction—Realty in foreign state.

Approved in Willey v. Decker, 11 Wyo. 540, 100 Am. St. Rep. 939, 73 Pac. 223, upholding district court's jurisdiction to restrain diversion of water by means of ditch in Montana, and by it carrying water to land in Wyoming.

15 How. 253-272, 14 L. 683, CORNING v. BURDEN.

Syl. 2 (V, 320). Means of obtaining result patentable.

Approved in Expanded Metal Co. v. Bradford, 136 Fed. 873, upholding Golding patent No. 527,242, for process of making open metal work.

Syl. 3 (V, 320). Abstract effect not patentable.

Approved in Los Angeles Art Organ Co. v. Aeolian Co., 143 Fed. 884, Tremaine & Pain patent No. 552,796, for improvements in mechanical musical instruments is valid, infringed by Fleming patent No. 659,442; Manhattan etc. Co. v. Helios-Upton Co., 135 Fed. 788, Baker patent No. 684,165, for method of regulating electric circuits, is void; Goss Printing Press Co. v. Scott, 134 Fed. 884, arguendo.

(V, 320.) Miscellaneous. Cited in Green v. American Car etc. Co., 163 Ind. 139, 71 N. E. 270, heavy steel power hammer is machine within statute requiring guarding of machinery.

15 How. 304-322, 14 L. 705, CURRAN v. STATE OF ARKANSAS.

Syl. 1 (V, 323). Following corporation's property for creditors.

Approved in City Nat. Bank v. Goshen etc. Mills Co., 35 Ind. App. 579, 580, 69 N. E. 211, 212, director of insolvent corporation who had resigned after it had been agreed that he should resign and have preference, is still officer for purpose of determining validity of preference.

Syl. 3 (V, 326). State stockholder does not impart sovereignty.

Approved in Gilmore v. Schenck, 115 La. 400, 39 So. 45, arguendo.

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15 How. 330-348, 14 L. 717, WINANS v. DENMEAD.

Syl. 1 (V, 330). Patents—Specifications liberally construed.

Approved in Shepherd v. Deitsch, 138 Fed. 87, upholding Shepherd patent No. 601,405, for brush with reticulated back.

Syl. 3 (V, 331). Patents—Substitution of equivalents.

Approved in Universal Brush Co. v. Sonn, 146 Fed. 531, 532, Morrison patent No. 717,014, claim 1, for method of making brushes, is infringed by Sonn patent No. 791,510; Nathan v. Howard, 143 Fed. 893, Howard patent No. 626,997, for improvement in heating stoves, is valid and infringed; Columbia Wire Co. v. Kokomo etc. Co., 143 Fed. 122, holding Bates patent No. 365,723, for wire-barbing machine, valid, and infringed by machine of Frederick patent No. 711,303; Eastern etc. Bag Co. v. Continental etc. Bag Co., 142 Fed. 499, holding Liddell patent No. 558,969, for paper bag machine valid, and infringed by machine of Claussen patent No. 598,497; Ferry-Hallock Co. v. Hallock, 142 Fed. 176, Ferry patent No. 523,833, for machine for automatically making hat-packing rings, is valid, and infringed; Brown Bag Fill. Mach. Co. v. Drohen, 140 Fed. 107, holding Cummings patent No. 573,171, for bag-filling machine, and Brown patent No. 578,133, for folding mechanism for use with former, valid and infringed; Pettibone v. Pennsylvania Steel Co., 133 Fed. 734, holding Strom patent No. 498,196, for railroad switch-stand, valid and infringed; Benbow etc. Mfg. Co. v. Simpson Mfg. Co., 132 Fed. 616, holding Schroeder patent No. 535,465, for means for operating washing machine, infringed; Oehrle v. Wm. H. Horstmann & Co., 131 Fed. 490, holding Oehrle patent No. 599,191, for improvement in ornamental cords, not infringed; Albright v. Langfeld, 131 Fed. 476, upholding Albright patent No. 439,086, for coin purse.

15 How. 348-354, 14 L. 724, WALWORTH v. KNEELAND.

Syl. 1 (V, 332). Supreme court—Federal question.

Approved in Allen v. Arguimbau, 198 U. S. 155, 49 L. 993, 25 Sup. Ct. 622, denying jurisdiction over action against maker of note, defense to which is that note given in consideration of promise to have cigars called for by contract made in Key West and removed from factory, without compliance with federal statutes.

15 How. 367-415, 14 L. 732, McDONOGH v. MURDOCH.

Syl. 1 (V, 333). Unlawful directions do not affect bequests.

Approved in Tincher v. Arnold, 147 Fed. 674, where trust provided that school for needy boys be erected not to cost more than certain amount, and income of balance used to pay teachers, income could be used to pay expense of maintenance and conduct of school.

Syl. 8 (V, 335). Exercise of corporate powers in foreign state.

Cited in Kansas City etc. Ry. Co. v. Stevenson, 135 Fed. 554, arguendo.

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15 How. 415-420, 14 L. 753, WYLIE v. COXE.

Syl. 1 (V, 336). Contract for attorney's fees for collecting claim.

Approved in Nutt v. Knutt, 200 U. S. 21, 50 L. 353, 26 Sup. Ct. 216, illegality of clause in contract for prosecution of claim against government making claim lien on claim does not invalidate contract in so far as provides for payment of percentage allowed on claim; Field v. Sammis, 12 N. M. 48, 73 Pac. 621, third party may intervene in garnishment proceedings arising under execution and set up legal or equitable rights in funds sought to be recovered.

Syl. 2 (V, 336). Equity—Inadequacy of law remedy.

Approved in Fidelity etc. Co. v. Fidelity Trust Co., 143 Fed. 159, upholding bill for accounting and discovery against depositaries of funds of insolvent association arising out of embezzlements by association's treasurer.

Syl. 3 (V, 337). Record must show want of jurisdiction.

Approved in Southern Pac. R. R. Co. v. United States, 200 U. S. 349, 50 L. 510, 26 Sup. Ct. 296, upholding jurisdiction over bill by United States to cancel patent erroneously issued for lands held by railroad, and for recovery of value of lands sold to bona fide purchasers.

15 How. 421-425, 14 L. 755, MURRAY v. GIBSON.

Syl. 1 (V, 337). Retroactive construction of statutes.

Approved in Haverhill v. Marlborough, 187 Mass. 155, 72 N. E. 945, Stat. 1902, p. 156, c. 213, relating to expenses incurred by board of health in caring for contagious diseases, does not affect mode of procedure in case of obligation existing at time of passage.

Syl. 3 (V, 339). Following state statutory construction.

Approved in Herman v. Texas, 198 U. S. 579, 49 L. 1171, 25 Sup. Ct. 800, following rule.

15 How. 426-433, 14 L. 757, DEN v. ASSOCIATION OF JERSEY CO.

Syl. 1 (V, 339). State owns tide lands.

Approved in City of Providence v. Comstock, 27 R. I. 556, 65 Atl. 314, ejectment lies where city owns tide lands and has been ousted from possession.

15 How. 467-494, 14 L. 775, UNITED STATES v. DAWSON.

Syl. 2 (V, 342). Place of trial of criminal cases.

Approved in Mahaffey v. Territory, 11 Okl. 225, 226, 66 Pac. 346, upholding removal of criminal cause on application of territory from one county to another.

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15 How. 546-560, 14 L. 809. LIVINGSTON v. WOODWORTH.

Syl. 3 (V, 346). Patents—Infringer's prospective profits as damages.

Approved in Corbin v. Taussig, 137 Fed. 153, where party has exclusive agency for sale of goods manufactured by another, within certain territory, damages in equity are limited to profits of offender.

XVI HOWARD.

16 How. 1-13, 14 L. 819, LEWIS v. DARLING.

Syl. 3 (V, 347). When realty charged with legacies.

Approved in Reynolds v. Reynolds, 27 R. I. 523, 63 Atl. 806, following rule.

16 How. 14-29, 14 L. 824, TURNER v. YATES.

Syl. 2 (V, 349). Secondary evidence—Diligence to produce original.

Approved in Pringey v. Guss, 16 Okl. 85, 86 Pac. 293, secondary evidence of written contract inadmissible, though it is in hands of one not party to suit, living in another state, without showing loss or that it is beyond control of party wishing to prove its terms.

16 How. 38-47, 14 L. 835, CONRAD v. GRIFFEY.

Syl. 1 (V, 351). Witnesses—Impeachment by contradictory statements.

Approved in Joy v. Liverpool etc. Ins. Co., 32 Tex. Civ. 438, 74 S. W. 824, deposition which had been quashed not admissible in action on fire policy to impeach testimony of witness as contained in subsequent deposition, where no foundation laid for impeachment.

16 How. 65-81, 14 L. 847, PENNINGTON v. GIBSON.

Syl. 2 (V, 354). Law action on equitable decree.

Approved in Israel v. Israel, 148 Fed. 578, state decree for alimony and costs supports action in another state for sum absolutely awarded, but not for future payments provided therein; Wagner v. Wagner, 26 R. I. 27, 57 Atl. 1058, 65 L. R. A. 816, action at law lies on decree in equity from another state for payment of money.

Syl. 3 (V, 354). Judgment ends further controversy on same point.

Approved in Georgia etc. Banking Co. v. Wright, 132 Fed. 917, judgment of Georgia supreme court in suit between state and corporation that charter precluded state from taxing company in excess of certain rate concludes state in subsequent suit for taxes for different year under different statute.

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Syl. 5 (V, 355). Judicial notice of state laws.

See 113 Am. St. Rep. 873, note.

16 How. 164-202, 14 L. 889, CROSS v. HARRISON.

Syl. 1 (V, 363). Ratification of treaty—Collection of duties.

Approved in Lincoln v. United States, 202 U. S. 499, 50 L. 1119, 26 Sup. Ct. 728, collection of duties on imports to Manila, which was not authorized by President's order of 1898, after ratification of Spanish treaty, was not ratified by Comp. St. 1905, p. 391; In re Minook, 2 Alaska, 209, Russian subjects remaining in Alaska after three years became naturalized by virtue of Russian treaty of 1867, and subsequent laws incorporating Alaska into United States.

Syl. 3 (V, 364). Congress regulates federal territory.

Approved in United States v. Winans, 198 U. S. 383, 49 L. 1093, 25 Sup. Ct. 662, fishing rights in Columbia river, secured to Yakima Indians by treaty of 1859, which provided for extinguishment of Indian title, are not subordinate to powers acquired by Washington state in shore lands on its admission; Kneeland v. Korter, 40 Wash. 363, 82 Pac. 609, 1 L. R. A. (N. S.) 745, Congress may grant tide lands between high and low water mark within a territory of the United States.

16 How. 251-262, 14 L. 925, MAILLARD v. LAWRENCE.

Syl. 3 (V, 367). Statutory construction—Popular meaning of words.

Approved in Darlington v. United States, 136 Fed. 718, dress shields, composed in chief of rubber and in part of cotton, are dutiable as wearing apparel under tariff act of 1890.

16 How. 275-288, 14 L. 936, CARROLL v. LESSEE OF CARROLL.

Syl. 3 (V, 370). Stare decisis—State decisions.

Approved in Harriman v. Northern Securities Co., 197 U. S. 291, 49 L. 761, 25 Sup. Ct. 493, determining question as to whether corporation organized pursuant to combination of stockholders in competing railroads to acquire controlling interest in their capital stock holds same as owner or trustee; Linstroth Wagon Co. v. Ballew, 149 Fed. 966, where, prior to involuntary bankruptcy, claimant under sequestration from state court seized bankrupt's property, and bankruptcy trustee intervened and lost, state judgment was conclusive on trustee; In re Cosmopolitan Power Co., 137 Fed. 861, 70 C. C. A. 388, bankruptcy court in determining whether state imposition is tax within Bankruptcy Act 1898, c. 541, § 64a, is not bound by state decisions not passing on merits of question; Ex parte Riggins, 134 Fed. 423, construing fourteenth amendment with reference to right to equal protection at hands of states; Rodwell v. Rowland, 137 N. C. 637, 50 S. E. 326, determining validity of election to fill vacancy in office of clerk of superior court; dissenting opinion in Ex parte Boyce,

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27 Nev. 366, 75 Pac. 17, 65 L. R. A. 47, majority upholding act of 1903, providing eight hour day for employees in mines or smelters.

16 How. 288-313, 14 L. 942, SMITH v. SWORMSTEDT.

Syl. 1 (V, 371). Bill by one in behalf of all.

Approved in City of Grafton v. Holt, 58 W. Va. 186, 52 S. E. 22, judge who is consumer of water supplied by city waterworks is disqualified from sitting at trial of suit by taxpayers and consumers to determine validity of water rates.

Distinguished in Methodist etc. Church South v. Clifton, 34 Tex. Civ. 253, 78 S. W. 735, voluntary association cannot be subjected to ordinary judgment for debt.

Syl. 3 (V, 372). Division of church—Effect on property.

Approved in Malone v. Lacroix, 143 Ala. 661, 144 Ala. 652, 41 So. 725, trustees of Methodist Episcopal Church South are legal successors of Methodist Episcopal Church in the United States of America, in execution of trust for erection of church.

16 How 314-354, 14 L. 953, MARSHALL v. BALTIMORE & OHIO R. R. CO.

Syl. 3 (V, 375). Stockholders act by representation.

Approved in United States v. Milwaukee etc. Transit Co., 142 Fed. 254, where officers and controlling stockholders in brewery organized corporation and on behalf of brewery contracted for shipments with carriers for commission, Elkins anti-rebate law violated.

Syl. 1 (V, 375). Residence of corporations.

Approved in Doctor v. Harrington, 196 U. S. 587, 49 L. 609, 25 Sup. Ct. 355, stockholders may assert actual citizenship to sustain federal jurisdiction of suit brought by them as stockholders; Thomas v. Ohio University Trustees, 195 U. S. 210, 49 L. 164, 25 Sup. Ct. 24, where Ohio state supreme court has held that university trustees have no corporate powers, allegation that it is citizen of and domiciled in Ohio does not aver that it is Ohio corporation; United States v. Milwaukee etc. Transit Co., 142 Fed. 253, where officers and controlling stockholders in brewery organized corporation and on behalf of brewery contracted for shipments with carriers on commission, Elkins anti-rebate law violated; Baltimore etc. R. R. Co. v. Allen, 58 W. Va. 398, 112 Am. St. Rep. 985, 52 S. E. 469, 3 L. R. A. (N. S.) 608, foreign railroad corporations operating roads in this state may be garnished here, irrespective of situs of debt.

Distinguished in Utah-Nevada Co. v. De Lamar, 133 Fed. 117, 66 C. C. A. 179, fact that person is president of corporation creates no presumption that he is citizen of same state as corporation.

Syl. 7 (V, 377). No specific performance of immoral contract.

Approved in Hazelton v. Sheckels, 202 U. S. 79, 50 L. 941, 26 Sup. Ct. 567, holding void contract to sell land at specified price if offer

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accepted within certain time, where made partly in consideration of services rendered in negotiating with Congress to purchase land for public building; Sussman v. Porter, 137 Fed. 164, argument to procure consent of property owners for construction and maintenance of trolley line in front of their properties, and also to obtain franchise therefor for contingent fee, is void; Baumhoff v. Oklahoma City etc. Co., 14 Okl. 140, 77 Pac. 44, upholding contract for sale of franchise after its amendment by council.

16 How. 369-415, 14 L. 977, PIQUA BRANCH OF STATE BANK OF OHIO v. KNOOP.

Syl. 2 (V, 384). Municipality chargeable by legislature.

See 97 Am. St. Rep. 349, note.

Syl. 10 (V, 387). Imposing higher tax than charter stipulation.

Distinguished in New York v. State Board of Tax Commrs., 199 U. S. 41, 105 Am. St. Rep. 702, 50 L. 77, 25 Sup. Ct. 715, N. Y. Law 1899, c. 712, imposing special franchise tax, does not impair obligation of contract granting right to operate street railroad in consideration of payment of part earnings.

16 How. 469-479, 14 L. 1019, THE STEAMBOAT NEW WORLD v. KING.

Syl. 1 (V, 397). Carrier's liability for injuries to deadhead.

Approved in Indianapolis etc. Terminal Co. v. Lawson, 143 Fed. 836, free passenger on electric car is entitled to exercise of highest skill on part of carrier; McNeill v. Durham etc. R. Co., 135 N. C. 699, 701, 47 S. E. 771, 772, 67 L. R. A. 227, holding railroad liable for injuries to passenger riding on pass.

Syl. 3 (V, 399). Care required of steam passenger carriers.

Approved in Indianapolis etc. Co. v. Lawson, 143 Fed. 837, applying rule where free passenger on electric road injured; Chicago etc. Ry. Co. v. Hamler, 215 Ill. 536, 106 Am. St. Rep. 187, 74 N. E. 709, railroad not liable for injuries to sleeping-car porter, where his contract with sleeping-car company releases railroad from liability; Powers etc. Co. v. Wells-Fargo & Co., 93 Minn. 145, 100 N. W. 736, holding express company liable for loss of goods caused by derailment of train upon which they were shipped; Williams v. Spokane Falls etc. Ry. Co., 39 Wash. 88, 89, 80 Pac. 1102, 1103, holding carrier liable for injury to passenger caused by breaking of coupler, where servants knew it was liable to come apart; Mannon v. Camden etc. Ry. Co., 56 W. Va. 556, 49 S. E. 451, holding street-car company liable for injuries to passenger who leaped from car in apprehension of danger from broken wire.

Syl. 5 (V, 401). "Gross" negligence is for jury.

Approved in Raymond v. Portland R. R. Co., 100 Me. 534, 62 Atl. 604, instruction that if conductor of electric car could, by exer-

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cise of great care, discover who wanted to get off, that would be equivalent to actual knowledge, is erroneous.

16 How. 480-491, 14 L. 1024, SEYMOUR v. McCORMICK.

Syl. 3 (V, 404). Patents—Profits as damages for infringement.

Approved in Brown v. Lanyon, 148 Fed. 839, action at law does not lie for sole purpose of recovering profits which infringer of patent has made.

Syl. 4 (V, 405). Infringement—Damages where patent covers improvement.

Approved in Baker v. Crane Co., 138 Fed. 60, 70 C. C. A. 486, on accounting for profits for infringement of claim of patent covering improvement, complainant must show how much profit on entire article was due to improvement.

16 How. 524-534, 14 L. 1043, FANNING v. GREGOIRE.

Syl. 2 (V, 408). Ferry franchise not exclusive.

Approved in Green v. Ivey, 45 Fla. 349, 33 So. 714, refusing to enjoin grantee of ferry from operating ferry at or near point on river between two counties at suit of prior licensee.

16 How. 535-547, 14 L. 1047, BARNEY v. SAUNDERS.

Syl. 4 (V, 411). Trustee's unauthorized profits belong to fund.

Approved in Thompson v. Territory, 10 Okl. 422, 62 Pac. 359, interest on territorial moneys deposited in bank by treasurer belong to territory.

16 How. 547-571, 14 L. 1052, SOUTHARD v. RUSSELL.

Syl. 5 (V, 413). Bill of review for newly discovered evidence.

Denied in Safe Deposit etc. Co. v. Gittings, 102 Md. 459, 461, 62 Atl. 1032, 4 L. R. A. (N. S.) 865, where wife's executor filed bill for accounting for property transferred to her husband and his contention that it was gift was denied, it was discretionary to refuse leave to file bill of review for newly discovered evidence.

16 How. 571-580, 14 L. 1063, SLICER v. BANK OF PITTSBURG.

Syl. 2 (V, 414). Presumptions as to judgment after long acquiescence.

Approved in United States v. Manthei, 2 Alaska, 465, applying rule in action on bail bond where accused failed to appear and bail forfeited.

16 How. 610-619, 14 L. 1079, EARLY v. DOE.

Syl. 2 (V, 417). Time of publication of tax sales.

Approved in Cadman v. Smith, 15 Okl. 638, 85 Pac. 348, delinquent tax sale on notice of less than twenty-one days is void where statute requires publication once a week for three consecutive weeks.

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16 How. 622-635, 14 L. 1084, DESHLER v. DODGE.

Syl. 2 (V, 419). Federal courts—Suits by assignee—Citizenship.

Distinguished in Kolze v. Hoadley, 200 U. S. 82, 85, 50 L. 380, 382, 26 Sup. Ct. 220, federal court has no jurisdiction over bill to foreclose trust deed at suit of assignee where assignor could not sue therein, though bill prayed cancellation of release as in fraud of complainant; Utah-Nevada Co. v. De Lamar, 133 Fed. 119, 121, 66 C. C. A. 179, denying federal jurisdiction over suit by assignee to recover money due on oral contract where assignor could not sue therein.

16 How. 635-659, 14 L. 1090, DOE v. BRADEN.

Syl. 2 (V. 421). Judicial questions—Annulment of treaties.

See 112 Am. St. Rep. 108, note.

XVII HOWARD.

17 How. 3-6, 15 L. 93, SHIELDS v. THOMAS.

Syl. 1 (V, 422). Amount in controversy—Appeal by several.

Approved in McDaniel v. Traylor, 196 U. S. 428, 430, 49 L. 539, 25 Sup. Ct. 369, upholding federal jurisdiction over equity suits between diverse citizens to set aside fraudulent probate judgment when aggregate claims upon which judgment is based exceed $2,000.

Distinguished in The Joseph B. Thomas, 148 Fed. 767, claims for wages in admiralty cannot be added together to give jurisdiction to appellate court; Feely v. Bryan, 55 W. Va. 594, 47 S. E. 311, where several creditors with separate demands attack mortgage as preference, these claims cannot be added to give appellate jurisdiction.

17 How. 17-19, 15 L. 42, UDALL v. STEAMSHIP OHIO.

Syl. 4 (V, 425). Amendment of libel in appellate court.

Approved in Fred Macey Co. v. Macey, 135 Fed. 729, 68 C. C. A. 363, bill by partnership cannot be amended by consent after removal to show citizenship of members where neither removal, petition nor record show removal case.

17 How. 23-30, 15 L. 115, HAYDEL v. DUFRESNE.

Syl. 1 (V, 425). Impeachment of government survey.

Approved in McBride v. Whitaker, 65 Neb. 147, 90 N. W. 970, government survey cannot be impeached collaterally in suit to quiet title.

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17 How. 30-41, 15 L. 27, YORK ETC. R. R. CO. v. WINANS.

Syl. 1 (V, 426). Transfer of powers by corporation.

Approved in Muntz v. Algiers etc. Ry. Co., 111 La. 428, 100 Am. St. Rep. 495, 35 So. 627, 64 L. R. A. 222, railroad is liable for injuries caused by negligence of itself or its lessees in operation of road. See 103 Am. St. Rep. 552, note.

17 How. 43-46, 15 L. 34, BARRIBEAN v. BRANT.

Syl. 2 (V, 429). Death of assignor to trustee pending appeal.

Approved in Brown v. Fletcher, 140 Fed. 645, 648, where cause of action in equity has passed for estate of deceased complainant by assignment, suit cannot be revived.

Syl. 3 (V, 429). Abatement where no revivor after death.

Approved in Brown v. Fletcher, 140 Fed. 645, after death of complainant, defendant cannot revive suit in equity.

17 How. 53-71, 15 L. 47, RAYMOND v. TYSON.

Syl. 3 (V, 431). Waiver of ship owner's lien by charter.

Approved in Larsen v. 150 Bales of Sisal Grass, 147 Fed. 786, where time charter gives owner of vessel lien on all cargoes for charter hire, no lien on cargo can be asserted by vessel owner as against shipper who has paid freight.

17 How. 100-116, 15 L. 58, LAWRENCE v. MINTURN.

Syl. 1 (V, 436). Libel by consignee of goods.

Approved in Merchants' etc. Bank v. Baltimore etc. S. B. Co., 102 Md. 580, 63 Atl. 110, where bill of lading provided for delivery to consignee or order only on surrender of bill, carrier is liable for delivery without surrender of bill.

Syl. 3 (V, 437). Jettison, when lawful.

Cited in Oceanic Steam Nav. Co. v. Aitken, 196 U. S. 596, 49 L. 613, 25 Sup. Ct. 317, arguendo.

17 How. 130-146, 15 L. 158, SHIELDS v. BARROW.

Syl. 3 (V, 441). Indispensable parties defined.

Approved in United States v. Northern Pac. R. Co., 134 Fed. 719, 67 C. C. A. 269, in suit by government to annul contract between corporations, all of the corporations are necessary parties; Florida Land etc. Co. v. Anderson, 50 Fla. 514, 39 So. 396, in suit to remove cloud and to cancel conveyance as fraudulent, parties executing conveyance are necessary parties; Tod v. Crisman, 123 Iowa, 699, 99 N. W. 688, contractor to pay when supervisors have ordered levy of tax is not necessary party to certiorari to test legality of order.

Syl. 4 (V, 443). Necessary parties defined.

Approved in Railroad Commission v. Palmer Hardware Co., 134 Ga. 637, 53 S. E. 195, arguendo.

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Syl. 6 (V, 445). No decree where necessary parties not present.

Approved in Weidenfeld v. Northern Pac. Ry. Co., 129 Fed. 311, 63 C. C. A. 537, in suit by stockholder to restrain corporation from issuing common stock instead of preferred, where end sought was destruction of securities company's title to majority of stock, latter company is indispensable party; Goldman v. Millay, 7 Ariz. 289, 64 Pac. 434, where in partition by administrator of mortgagee of undivided half of library against purchaser of other half, latter had possession of undivided one-half only, other half being in possession of widow, mortgagor was necessary party; State v. Gormley, 40 Wash. 604, 82 Pac. 930, 3 L. R. A. (N. S.) 256, holders of county warrants are necessary parties to suit to restrain their payment.

Syl. 7 (V, 447). Amendment to show new case.

Distinguished in Trust Co. v. Scottish Union Ins. Co., 119 Ga. 674, 46 S. E. 856, mortgagee may sue alone for loss under policy payable to him, when amount of his debt equals value of insurance.

Syl. 8 (V, 447). Amendment inserting new case.

Approved in Huntt v. McNamee, 141 Fed. 298, applying rule in action for personal injuries caused by negligence of independent contractor.

Syl. 11 (V, 450). Cross-bill to make new parties.

Approved in Doke v. Williams, 45 Fla. 251, 34 So. 570, denying right of third party to be made defendant to suit for injunction; Wightman v. Evanston Yaryan Co., 217 Ill. 377, 108 Am. St. Rep. 258, 75 N. E. 504, on foreclosure of trust deed securing bonds of corporation, parties holding unexpired contracts with corporation cannot intervene.

Syl. 13 (V, 451). Cross-bill defined.

Approved in Ames etc. Realty Co. v. Big Indian etc. Co., 146 Fed. 179, federal equity court in suit to protect water rights may entertain cross-bill by any of defendants setting up priority of right; Emery Co. v. Tweedie Trading Co., 143 Fed. 147, applying rule in admiralty.

17 How. 152-156, 15 L. 68, PROPELLER MONTICELLO v. MOLLISON.

Syl. 5 (V, 453). Admiralty—Intervention by insurer.

Approved in The Nonpareil, 149 Fed. 525, carrier by water may sue for loss of goods in behalf of all parties in interest, though loss has been paid by an insurer.

17 How. 170-178, 15 L. 233, SCHOONER CATHERINE v. DICKINSON.

Syl. 2 (V, 457). Collision—Damages where vessel raised.

Approved in The Cumberland, 135 Fed. 236, where at instance of claimant cost of repairing injured vessel is adopted as measure of damages to libelant, he may recover demurrage up to time of sale

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where she was sold without repairing but before repairs could have been completed.

Syl. 3 (V, 457). Collision—Close-hauled vessel keeps course.

Approved in The Eagle Wing, 135 Fed. 830, applying rule to collision at night between two schooners.

17 How. 204-212, 15 L. 219, UNITED STATES v. NICKERSON.

Syl. 2 (V, 461). Acquittal by erroneous construction of statute as bar.

Approved in State v. Price, 127 Iowa, 305, 103 N. W. 197, acquittal under indictment for rape on female under age of consent bars prosecution for incest with same female at same time.

Syl. 4 (V, 461). Perjury—Facts showing materiality.

Approved in Finch v. United States, 1 Okl. 403, 33 Pac. 641, perjury lies against juror who on voir dire testifies falsely.

17 How. 225-231, 15 L. 226, UNITED STATES v. SEAMAN.

Syl. 1 (V, 462). Mandamus to control executive discretion.

Approved in Hover v. People, 17 Colo. App. 392, 68 Pac. 685, denying mandamus to control amount of appropriation by council to defray expenses of fire and police board.

Syl. 2 (V, 463). Mandamus only granted where act ministerial.

Approved in State v. Savage, 65 Neb. 772, 91 N. W. 730, denying mandamus to compel board of equalization to reassess property of railroad, telegraph and sleeping-car companies.

17 How. 232-239, 15 L. 132, McBLAIR v. GIBBES.

Syl. 1 (V, 464). Assignment of interest in illegal contract.

Approved in Padilla v. Padilla, 11 N. M. 553, 70 Pac. 566, upholding agreement made prior to judgment whereby defendant agreed to pay over to sister her share of Indian depredation claim recovered in his own name.

Syl. 4 (V, 465). Illegality of contract no defense after performance.

Approved in Monahan v. Monahan, 77 Vt. 143, 59 Atl. 172, 70 L. R. A. 935, impressing securities with trust though placed in name of defendant to avoid taxation.

17 How. 284-314, 15 L. 102, UNITED STATES v. GUTHRIE.

Syl. 4 (V, 470). No mandamus to control discretion.

Approved in State v. Savage 65 Neb. 772, 91 N. W. 730, denying mandamus to compel board of equalization to reassess property of railroad, telegraph and sleeping-car companies.

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17 How. 315-322, 15 L. 77, CLARK v. CLARK.

Syl. 4 (V, 472). Effect of bankruptcy discharge on property rights.

Approved in In re Home Discount Co., 147 Fed. 548, bankrupt's discharge avoids assignment of future wages given to secure provable debt earned after filing of petition.

17 How. 322-340, 15 L. 164, BOOTH v. CLARK.

Syl. 1 (V, 473). Receiver's powers limited by order of appointment.

Approved in Great Western Min. etc. Co. v. Harris, 198 U. S. 577, 49 L. 1169, 25 Sup. Ct. 770, receiver of corporation cannot be empowered by appointing court to sue in foreign jurisdiction to realize its assets; In re Builders' Lumber Co., 148 Fed. 249, denying purchase money lien of claimant who had sold property to receiver under conditional sale; Detroit etc. R. R. Co. v. Campbell, 140 Mich. 391, 103 N. W. 859, existence of receiver of railroad appointed on creditor's bill does not devest corporation of right to condemn land for right of way.

Syl. 8 (V, 475). Receiver's suit in foreign court.

Approved in Great Western Min. etc. Co. v. Harris, 198 U. S. 574, 578, 49 L. 1168, 1169, 25 Sup. Ct. 770, receiver of foreign corporation cannot be empowered by appointing court to sue in foreign jurisdiction to realize its assets; Covell v. Fowler, 144 Fed. 539, receiver of bank in liquidation cannot sue in another jurisdiction to enforce stockholder's liability; Fowler v. Osgood, 141 Fed. 21, 22, 23, federal court receiver of insolvent corporation cannot sue in another district to recover fund alleged to be held in trust for creditors, though appointing court authorized suit; Edwards v. National Window Glass etc. Assn., 139 Fed. 797, 798, federal receiver for corporation cannot sue in federal court of another jurisdiction on cause of action in favor of corporation; Egan v. North American Loan Co., 45 Or. 136, 76 Pac. 775, where loan society in hands of receiver has loaned money on property in another state, borrower may, on payment of loan, sue to cancel unsatisfied mortgage given as security, without leave of appointing court.

Syl. 9 (V, 476). Receiver has no extraterritorial power.

Approved in Great Western Min. etc. Co. v. Harris, 198 U. S. 575, 576, 49 L. 1168, 25 Sup. Ct. 770, receiver of corporation cannot be empowered by appointing court to sue in foreign jurisdiction to realize its assets; In re Benedict, 140 Fed. 56, applying rule to bankruptcy receiver.

Distinguished in Childs v. Blethen, 40 Wash. 349, 82 Pac. 408, where, pending receivership in sister state, suit against insolvent bank creditor and court fixed liability of each stockholder on intervention by creditor, creditors and receiver could sue on judgment in this state.

17 How. 344-352, 15 L. 96, BURCHELL v. MARSH.

Syl. 1 (V, 478). Arbitrator's award is final.

Approved in Levin v. Northwestern Nat. Ins. Co., 146 Fed. 77, award of arbitrators fixing amount of insured's loss, made in accordance with

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provisions of policy, cannot be impeached for fraud in federal action at law; White Star Mining Co. v. Hultberg, 220 Ill. 606, 77 N. E. 337, applying principle where corporation agreed to arbitration.

Syl. 2 (V, 478). Setting aside award for fraud.

Approved in Roberts Bros. v. Consumers Can Co., 102 Md. 369, 111 Am. St. Rep. 382, 62 Atl. 587, fact that deposition for use before arbitrators was by notary's mistake sent to one of parties instead of directly to them did not authorize its rejection where party sent it to them unopened.

Syl. 5 (V, 479). Setting aside award for error of law or fact.

Approved in White Star Mining Co. v. Hultberg, 220 Ill. 602, 77 N. E. 336, applying rule where corporation agreed to arbitration.

Syl. 7 (V, 479). Setting aside award for mistake.

Approved in Burrell v. United States, 147 Fed. 48, federal court may enter judgment on award of arbitrators.

Syl. 9 (V, 479). Award not set side for error of judgment.

Approved in Burrell v. United States, 147 Fed. 50, where arbitration agreement provided for taking of proof in same manner as in trial of court cases, and that judgment entered on award should be unappealable; objections to introduction of evidence cannot be urged against judgment entered on award.

17 How. 369-399, 15 L. 80, FONTAIN v. RAVENEL.

Syl. 4 (V, 481). Federal equity powers.

Approved in dissenting opinion in James v. Gray, 131 Fed. 409, 65 C. C. A. 385, majority holding loan made by wife to husband from her separate estate is provable as debt against his estate irrespective of its enforceability under state law.

Syl. 5 (V, 481). Sovereign prerogatives are in states.

Approved in Brigham v. Peter Bent Brigham Hospital, 134 Fed. 519, 67 C. C. A. 393, construing charitable bequest to trustees who should, after accumulation of income for twenty-five years, procure formation of corporation to which estate should be transferred, as impressing entire estate with trust from testator's death.

17 How. 399-403, 15 L. 95, BOGART v. STEAMBOAT JOHN JAY.

Syl. 1 (V, 483). Admiralty cannot sell ship to pay mortgage.

Approved in The Conveyor, 147 Fed. 589, upholding admiralty jurisdiction to administer fund applicable to payment of maritime liens with reference to claims based on mortgage; the Clifton, 143 Fed. 463, denying jurisdiction of admiralty over suit by mortgagee under mortgage to secure money borrowed to pay purchase price of vessel to recover possession of vessel; The Gordon Campbell, 131 Fed. 965, where admiralty court has in its registry for distribution fund arising from

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sale of vessel and maritime liens have been paid, holder of recorded mortgage may prove claim against fund.

17 How. 403-416, 15 L. 110, WEST v. COCHRAN.

Syl. 5 (V, 485). Survey necessary to pass title.

Approved in Territory v. Delinquent Taxpayers, 12 N. M. 175, 76 Pac. 318, until confirmation by court of private land claims of survey of imperfect grant, land is not taxable.

Syl. 7 (V, 485). Survey of confirmed lands.

Approved in McBride v. Whitaker, 65 Neb. 146, 90 N. W. 970, plat of survey made and approved by land department cannot be collaterally impeached; Territory v. Delinquent Taxpayers, 12 N. M. 172, 76 Pac. 317, until confirmation by court of private land claims of survey of imperfect grant, land is not taxable.

17 How. 437-443, 15 L. 129, BRUCE v. UNITED STATES.

Syl. 1 (V, 489). Treasury transcript as evidence.

Approved in United States v. Pierson, 145 Fed. 817, 818, introduction of duly certified transcript of books and proceedings of treasury department in action on Indian agent's bond establishes prima facie case.

Syl. 2 (V, 489). Reappointment of officer—Surety's liability.

Approved in Lake Co. v. Neilon, 44 Or. 17, 74 Pac. 213, applying principle in action on tax collector's bond.

Syl. 3 (V, 490). Reappointed officer—Sureties' burden to disprove liability.

Approved in Lake Co. v. Neilon, 44 Or. 21, 74 Pac. 214, applying principle in action on tax collector's bond.

17 How. 443-447, 15 L. 123, HENDRICKSON v. HINCKLEY.

Syl. 1 (V, 490). Injunction against law judgment.

Approved in Nelson v. Meehan, 2 Alaska, 493, vacating, after term, judgment obtained by fraud and perjury, after its affirmance by appellate court; Hockaday v. Jones, 8 Okl. 163, 56 Pac. 1056, refusing to enjoin execution on default judgment upon constructive service; Farmers' etc. Warehouse Co. v. Pridemore, 55 W. Va. 463, 47 S. E. 263, refusing to enjoin judgment at law where fraud, mistake or circumstance beyond complainant's control not alleged as cause of failure of proof at trial.

17 How. 447-455, 15 L. 155, STEVENS v. GLADDING.

Syl. 3 (V, 493). Property in copyright and plates distinguished.

Approved in Bobbs-Merrill Co. v. Straus, 147 Fed. 18, 20, refusing to enjoin dealer from selling copyrighted book at less than price mentioned in notice printed in book to effect that no dealer was licensed to sell at less price; Werckmeister v. American Lith. Co., 134 Fed. 324, 326, 68 L. R. A. 591, exhibition of original copyrighted painting at

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academy at which no person authorized to copy same, and to which public other than members not admitted except on payment of fee, is no publication.

Syl. 4 (V, 493). Mingling of ownership in plate and copyright.

Approved in Werckmeister v. American Lith. Co., 142 Fed. 834, notice of copyright need not be put on original painting.

Syl. 5 (V, 494). Equity—Enforcement of penalty for infringement of copyright.

Approved in Bobbs-Merrill Co. v. Straus, 147 Fed. 21, refusing to enjoin dealer from selling copyrighted book at less than price mentioned in notice printed in book to effect that no dealer was licensed to sell at less price; United States v. Berrigan, 2 Alaska, 446, under Russian treaty, members of Athapascan stock are uncivilized tribes entitled to the equal protection of laws afforded to similar aboriginal tribes.

Syl. 6 (V, 494). Copyright—Account in equity for profits.

Approved in Social Register Assn. v. Murphy, 129 Fed. 148, in equity suit for infringement of copyright there can be no damages recovered beyond profits of defendant; Hardy v. LaDow, 72 Kan. 178, 83 Pac. 403, where plaintiff alleged terms of lease agreed upon, and that he was fraudulently induced to sign lease not conforming thereto, and he prayed for cancellation and general relief, court could reform lease.

17 How. 478-525, 15 L. 181, FLORIDA v. GEORGIA.

(V, 500.) Miscellaneous. Cited in Ex parte Cox, 44 Fla. 540, 33 So. 510, 61 L. R. A. 734, writ of error does not lie from state supreme court to review judgment of individual judges thereof on habeas corpus.

17 How. 525-541, 15 L. 236, UNITED STATES v. RITCHIE.

Syl. 4 (V, 502). Grant to Indian by California governor valid.

Approved in Territory v. Delinquent Taxpayers, 12 N. M. 142, 143, 144, 76 Pac. 308, lands of Pueblo Indians in New Mexico are taxable.

17 How. 542-576, 15 L. 241, FREMONT v. UNITED STATES.

Syl. 7 (V, 504). Grant by California governor was in praesenti.

Approved in Conway v. United States, 149 Fed. 266, determining rights of Indian woman allottee whose selection was approved but whose patent was by mistake made out to husband; Catron v. Laughlin, 11 N. M. 635, 72 Pac. 33, where Congress has confirmed Mexican grant to such grantees as had not forfeited rights by noncompliance with conditions of grant, burden of showing forfeiture prior to cession is on party alleging it.

Syl. 13 (V, 507). Forfeiture of grant for sale after cession of territory.

Approved in Catron v. Laughlin, 11 N. M. 623, 72 Pac. 29, applying rule as to grant in New Mexico.

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17 How. 576-579, 15 L. 35, WEBB v. DEN.

Syl. 1 (V, 508). Retrospective statutes.

Approved in Miners' etc. Bank v. Snyder, 100 Md. 65, 108 Am. St. Rep. 390, 68 L. R. A. 312, 59 Atl. 708, upholding Acts 1904, p. 597, substituting equitable remedy to enforce stockholder's liability, as applied to suit in which judgment has not been rendered.

(V, 508.) Miscellaneous. Cited in McPherson v. Julius, 17 S. D. 127, 95 N. W. 436, in suit to quiet title to mining claim, judgment in prior action to which plaintiffs not parties is not binding on plaintiffs, in so far as it established validity of defendant's claim including conflicting ground.

17 How. 591-596, 15 L. 179, AYRES v. CARVER.

Syl. 1 (V, 510). New matter not allowed in cross-bill.

Approved in Emery Co. v. Tweedie Trading Co., 143 Fed. 147, applying rule in action in admiralty to recover balance for hire of steamer; Jackson v. Dutton, 46 Fla. 517, 35 So. 76, where no decree pro confesso has been entered on cross-bill on foreclosure, court may permit answer not properly sworn to to be sworn to.

Distinguished in Ames Realty Co. v. Big Indian etc. Co., 146 Fed. 177, in federal equity suit to establish water rights against separate appropriators of diverse citizenship from complainant, court has jurisdiction of cross-bill by defendants setting up priority, irrespective of citizenship.

Syl. 2 (V, 511). Decision on cross-bill not appealable.

Approved in Blythe Co. v. Bankers' Ins. Co., 147 Cal. 93, 94, 81 Pac. 285, decree pro confesso on cross-bill in federal court may be vacated on motion after adjournment of term.

17 How. 596-600, 15 L. 254, HAYS v. PACIFIC MAIL STEAMSHIP CO.

Syl. 2 (V, 512). State tax—Situs of vessels.

Approved in Ayer etc. Tie Co. v. Kentucky, 202 U. S. 421, 422, 50 L. 1087, 26 Sup. Ct. 678, holding actual situs of vessel and not place of enrollment of vessel used in interstate commerce as marked on stern determines tax situs of vessel, and reversing, Commonwealth v. Ayer etc. Co., 117 Ky. 169, 77 S. W. 686, holding home port of vessel engaged in interstate commerce as marked on stern is its situs for taxation, though its owner resides in different state; Union etc. Transit Co. v. Kentucky, 199 U. S. 205, 50 L. 154, 26 Sup. Ct. 36, due process of law denied Kentucky corporation by tax assessed under Ky. Stat., § 4020, on rolling stock permanently located in other states and employed there in prosecution of business; Olson v. San Francisco, 148 Cal. 83, 82 Pac. 852, vessel engaged in commerce on high seas is taxable in San Francisco where owner resided, though she was temporarily registered in Washington and had never been in California; Flowerree etc. Co. v.

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Lewis & Clark County, 33 Mont. 38, 81 Pac. 400, where corporation owning cattle in certain county where its business manager resided drove number of cattle into another county for winter feeding, cattle not taxable in latter county.

Distinguished in Foppiano v. Speed, 199 U. S. 520, 50 L. 292, 26 Sup. Ct. 138, upholding exaction by state of license fee from person engaged in selling liquor within state over bar on boat employed in interstate commerce; Old Dominion S. S. Co. v. Virginia, 198 U. S. 306, 307, 308, 49 L. 1062, 25 Sup. Ct. 686, vessels which, though engaged in interstate commerce, are employed in such commerce wholly within limits of state, are taxable there though registered in another state; Prairie Cattle Co. v. Williamson, 5 Okl. 494, 49 Pac. 939, under Sess. Laws 1895, art. 5, §§ 1, 2, where cattle owned in another state actually ranged in certain county here during entire year, they were taxable in such county.

XVIII HOWARD.

18 How. 16-19, 15 L. 277, McLEAN v. MEEK.

Syl. 1 (V, 519). Foreign judgment against administrator as evidence.

Approved in Coram v. Ingersoll, 148 Fed. 175, judgment on merits against ancillary administrator in action on chose in action bars second suit by ancillary administrator in another jurisdiction.

18 How. 43-50, 15 L. 285, BARNARD v. ASHLEY.

Syl. 1 (V, 523). Conclusiveness of land officer's decision.

Approved in Le Marchel v. Teegarden, 133 Fed. 827, party attacking patent for mistake of fact must plead and prove evidence before department from which mistake resulted, the particular mistake and the way in which it occurred; Smith v. Love, 49 Fla. 239, 38 So. 379, declaring patentee who obtained patent by fraud a trustee for party legally entitled to patent.

Syl. 2 (V, 525). Rights accruing to entryman under pre-emption.

Distinguished in Estes v. Timmons, 199 U. S. 395, 50 L. 244, 26 Sup. Ct. 85, perjury on hearing before Land Department of contest under homestead laws is not relievable in equity.

18 How. 50-60, 15 L. 280, WRIGHT v. MATTISON.

Syl. 1 (V, 526). Adverse possession—Color of title defined.

Approved in Tidwell v. Chiricahua Cattle Co., 5 Ariz. 367, 53 Pac. 196, under act Cong. 1885, prohibiting inclosure of public lands, one could not enter tract of less than one hundred and sixty acres, which

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had been inclosed by original settler as incident to settlement, and was held by plaintiff under record conveyances from original settler; Beasley v. Equitable Securities Co., 72 Ark. 610, 84 S. W. 228, bond for title is not color of title within Acts 1883, p. 106, § 1, providing for compensation for improvements made by occupant of land belonging to another; Johnson v. Hurst, 10 Idaho, 325, 77 Pac. 791, patentee of greater acreage than government receives pay for may maintain suit to quiet title against trespasser; Woodruff v. Wallace, 3 Okl. 374, 41 Pac. 364, homestead filing does not convey color of title within meaning of act of Congress of June 1, 1874.

18 How. 60-63, 15 L. 265, GRAHAM v. BAYNE.

Syl. 1 (V, 528). No review of agreed case.

Approved in Swift & Co. v. Jones, 145 Fed. 494, circuit court cannot, in action at law, order trial before special master authorized to hear and pass on issues of fact and report findings; Anglo-American Land etc. Co. v. Lombard, 132 Fed. 734, 68 C. C. A. 89, where special finding in action at law tried to court responds only to part of issues and facts found are not decisive of case, new trial awarded.

18 How. 71-76, 15 L. 269, SMITH v. STATE OF MARYLAND.

Syl. 1 (V, 531). Tide lands belong to state.

Approved in State v. Price, 71 N. J. L. 254, 58 Atl. 1017, upholding oyster and clam act of 1902; People v. Bootman, 180 N. Y. 10, 72 N. E. 508, upholding game laws of 1900, prohibiting possession of game during close season; Taylor v. Commonwealth, 102 Va. 766, 102 Am. St. Rep. 865, 47 S. E. 878, upholding title of state in bed of navigable river as against riparian owner.

Syl. 2 (V, 533). Constitutional restraints on federal government.

Approved in State v. MacQueen, 69 N. J. L. 527, 55 Atl. 1008, upholding reading of newspaper article in nature of confession taken from accused at time of arrest; Territory v. Stroud, 6 Okl. 111, 50 Pac. 267, upholding prosecution by information without preliminary examination.

18 How. 82-86, 15 L. 273, BUSH v. PERSON.

Syl. 1 (V, 536). Mortgagor's after-acquired title.

Approved in United States v. Clark, 200 U. S. 607, 50 L. 616, 26 Sup. Ct. 340, purchaser of timber lands after receiver's final receipts have issued is protected as bona fide purchaser against cancellation, for frauds of entryman, of patent afterward issued.

18 How. 87-89, 15 L. 279, MINTER v. CROMMELIN.

Syl. 1 (V, 537). Land patent presumes regularity of preliminaries.

Approved in Bradshaw v. Edelen, 194 Mo. 661, 92 S. W. 697, where island in Missouri river surveyed by government prior to admission

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of Missouri into Union belonged to United States and passed to citizen by patent.

18 How. 126-134, 15 L. 334, HAM v. STATE OF MISSOURI.

Syl. 1 (V, 546). Confirmation of imperfect Spanish grant confers no title.

Distinguished in Hollister v. State, 9 Idaho, 15, 71 Pac. 543, Idaho admission act does not restrict right of eminent domain over lands granted to state by that act.

18 How. 135, 15 L. 290, GUILD v. FRONTIN.

Syl. 1 (V, 546). No review where jury waived and findings general.

Approved in Anglo-American etc. Co. v. Lombard, 132 Fed. 734, 68 C. C. A. 89, where special finding in action at law responds only to part of issues, and facts found are not decisive of case, new trial awarded.

18 How. 137-143, 15 L. 318, PARKER v. OVERMAN.

Syl. 2 (V, 548). Removal—Citizenship and residence not synonymous.

Approved in Steigleder v. McQuesten, 198 U. S. 143, 49 L. 988, 25 Sup. Ct. 616, passing on question of jurisdiction though motion to dismiss merely charged that parties were residents of same state; Irving v. Smith, 132 Fed. 207, allegation in removal petition that defendant is citizen of state other than that in which suit is pending is not equivalent to allegation that he is nonresident of that state.

18 How. 143-149, 15 L. 304, RICHARDS v. HOLMES.

Syl. 2 (V, 551). Power to sell includes power to adjourn.

See 97 Am. St. Rep. 654, 659, note.

Syl. 3 (V, 552). Mortgage creditor may bid.

Approved in Anderson v. Messinger, 146 Fed. 932, 933, pledgee may purchase where sale conducted by master.

18 How. 150-158, 15 L. 320, JONES v. JOHNSTON.

Syl. 1 (V, 552). Deed referring to recorded plat for description.

Approved in Wilson v. Chicago etc. Co., 143 Fed. 712, construing deed referring to map for location of line of river-bed.

Syl. 3 (V, 553). Boundaries—Gradually changing water line.

Approved in Sherwin v. Bitzer, 97 Minn. 257, 106 N. W. 1048, transfer of government lot abutting on lake by number of government survey without restricting words conveys all land which has become part of lot by recession of lake.

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18 How. 173-182, 15 L. 338, COOPER v. ROBERTS.

Syl. 2 (V, 557). Michigan's title to lands perfected on survey.

Approved in State v. Jennings, 47 Fla. 320, 35 So. 993, under act of Congress of 1845, granting school lands to Florida, when by survey sixteenth section or fractional part thereof is ascertained to exist in any township, grant immediately attaches without patent.

Syl. 3 (V, 558). State's control over school lands.

Approved in United States v. Tully, 140 Fed. 904, 905, determining federal jurisdiction over crime committed on lands occupied but not legally reserved for military reservation.

(V, 557.) Miscellaneous. Cited in Montana Min. Co. v. St. Louis etc. Co., 147 Fed. 904, reciting history of litigation.

18 How. 182-192, 15 L. 341, THE SCHOONER FREEMAN v. BUCKINGHAM.

Syl. 3 (V, 559). No lien until cargo delivered.

Approved in Guffey v. Alaska etc. S. S. Co., 130 Fed. 274, 64 C. C. A. 517, under bill of lading for goods to be shipped on defendants' vessel, "now" at certain port, where complainant knew vessel was on high seas, and goods never delivered to master, vessel not liable to maritime lien for breach of contract; Henderson v. Louisville etc. R. Co., 116 La. 1049, 41 So. 253, and Roy v. Northern Pac. Ry. Co., 42 Wash. 579, 85 Pac. 55, 56, both holding act of carrier's agent in delivering bill of lading for goods he knew had not been delivered to carrier do not bind carrier even as against innocent transferee; Watkins Nat. Bank v. Cleveland etc. Ry. Co., 117 Mo. App. 252, 93 S. W. 846, carrier's liability to one to whom bills of lading have been negotiated, for issuing same before freight received, in violation of statute, is not changed by subsequent receipt thereof. See 105 Am. St. Rep. 348, 350, 351, note.

Syl. 4 (V, 562). Master's contract of affreightment binds vessel.

Approved in Golcar etc. Co. v. Tweedie Trading Co., 146 Fed. 568, under charter of vessel whereby captain appointed by owners was to be under orders of charterers who agreed to indemnify owners for liabilities arising from captain signing bills of lading, charterer cannot recover from owner for shortage in delivery; The Worthington, 133 Fed. 726, 70 L. R. A. 353, 66 C. C. A. 555, owner of vessel who borrowed money in foreign port on credit of vessel, upon representation that it was to pay for loading, is estopped to deny it was so used.

18 How. 202-217, 15 L. 352, ABBOTT v. ESSEX COMPANY.

Syl. 1 (V, 565). Devise to sons or to another on death without issue.

Approved in Yocum v. Parker, 134 Fed. 209, 67 C. C. A. 227, devise to son provided that if he die without issue lands shall pass to others vests fee simple in son and creates no estate tail.

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Distinguished in Anderson v. Messinger, 146 Fed. 943, 944, construing devise to sons provided that if either died without descendants, then survivor should take, and if latter died without descendants, estate should go to brothers and sisters, as devising life estate to sons.

Syl. 2 (V, 566). Fee passes without words of inheritance.

Approved in McCaffrey v. Manogue, 196 U. S. 571, 49 L. 603, 25 Sup. Ct. 319, under will making all heirs devisees without words of limitation, and charging one receiving most land with payment of debts and funeral expenses, devisees took fee simple.

Syl. 6 (V, 566). "Lawful heirs of their own," defined.

Approved in Coleman v. Coleman, 69 Kan. 41, 44, 76 Pac. 440, under devise to sons conditioned that on death of either without heirs of his own, survivors should take, on death of infant son, his mother did not inherit.

Distinguished in Anderson v. Messinger, 146 Fed. 944, under devise to sons which provided that if either died without issue then survivor should take, and if latter left no issue, estate should go to brothers and sisters, sons took life estate.

18 How. 217-223, 15 L. 357, McLAUGHLIN v. SWANN.

Syl. 2 (V, 567). Garnishee's defenses.

Approved in Field v. Sammis, 12 N. M. 45, 73 Pac. 620, following rule.

18 How. 223-230, 15 L. 359, THE STEAMBOAT NEW YORK v. REA.

Syl. 2 (V, 567). Steamers must keep competent lookout.

Approved in The Idlewild, 129 Fed. 847, holding tug towing scow at fault for collision with yacht anchored at night in harbor.

18 How. 246-253, 15 L. 380, YORK & CUMBERLAND R. R. CO. v. MYERS.

Syl. 1 (V, 569). Bill of exceptions showing facts.

Approved in Metropolitan R. R. Co. v. Macfarland, 195 U. S. 331, 49 L. 223, 25 Sup. Ct. 28, errors of law in condemnation proceedings are not reviewable without bill of exceptions.

Syl. 6 (V, 570). Award on arbitration is final decision.

Approved in Burrell v. United States, 147 Fed. 49, 51, where arbitration agreement provided that proof should be taken before arbitrators in same manner as in trials, and judgment awarded should be unappealable, objections against introduction of evidence cannot be urged against judgment; Swift & Co. v. Jones, 145 Fed. 493, in action at law circuit court cannot, even by consent, order trial before special master authorized to pass on issues of fact and report findings to court.

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18 How. 253-263, 15 L. 368, SHIELDS v. THOMAS.

Syl. 1 (V, 571). Nonresident's appearance gives jurisdiction.

Approved in Succession of Caldwell, 114 La. 195, 108 Am. St. Re 347, 38 So. 142, giving credit to Massachusetts probate decree o adoption.

Syl. 2 (V, 571). Equity—Determination of multifariousness.

Approved in Inman v. New York etc. Co., 131 Fed. 999, bill, i one suit, attempting to settle right of ownership of stock of corpora tion and to ask relief dependent on such ownership, is multifariou

Syl. 4 (V, 571). Equity jurisdiction not defeated by jury.

Approved in Bradford v. Territory, 1 Okl. 370, 34 Pac. 67, qu warranto proceeding is suit at common law within seventh amendmen relating to juries.

18 How. 263-266, 15 L. 263, ORTON v. SMITH.

Syl. 1 (V, 572). Equitable title and possession to quiet title.

Approved in Davis v. Farmer, 141 Fed. 706, upholding suit to quie title based on state patent to complainant's predecessor; First Bap tist Church v. Harper, 191 Mass. 209, 77 N. E. 780, allegation tha defendant's ancestor, in taking deed in own name, acted on behalf o plaintiff's grantor, is insufficient to maintain suit to remove clou though plaintiff in actual possession under inchoate paper title; Glen v. West, 103 Va. 524, 49 S. E. 672, holder of equitable title out o possession cannot quiet title against possessor under tax title; Wallac v. Elm Grove Coal Co., 58 W. Va. 455, 52 S. E. 487, owner of surfac when underlying coal has been conveyed with privilege of remova acquired no title to coal by exclusive and continued possession of su face; dissenting opinion in Logan v. Ward, 58 W. Va. 378, 52 S. E 402, majority holding owner of land in actual possession who is entere upon by an adverse claimant cannot sustain bill to remove cloud.

Distinguished in Big Six etc. Co. v. Mitchell, 138 Fed. 283, where bi was maintainable to enjoin lessee of mine from committing wast though plaintiff was not in possession, court could cancel lease a cloud on title.

Syl. 4 (V, 574). Attached jurisdiction cannot be devested by othe court.

Approved in Louisville Trust Co. v. Knott, 130 Fed. 825, 65 C. C. A 158, where on expiration of corporation's franchise assets delivere to liquidator, and minority stockholders filed bill in state court t ascertain debts and sell and distribute assets, and pending suit creditc obtained collusive federal judgment and had receiver appointed unde creditor's bill, who took possession, such receiver should surrend possession to receiver subsequently appointed by state court.

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18 How. 272-286, 15 L. 372, DEN v. HOBOKEN LAND & IMP. CO.

Syl. 1 (V, 575). Due process of law defined.

Approved in New York etc. R. Co. v. Offield, 77 Conn. 422, 59 Atl. 512, upholding Law 1895, c. 232, authorizing railroad acquiring more than three-fourths of stock of another railroad to condemn it; Tilley v. Cox, 119 Ga. 870, 47 S. E. 221, upholding Civ. Code, 1895, § 5331, direction of verdict where there is no conflict in evidence; McKinster v. Sager, 163 Ind. 677, 106 Am. St. Rep. 268, 72 N. E. 856, 68 L. R. A. 273, holding void Acts 1903, p. 276, c. 153, relating to sales by merchants not in usual course of trade; Light v. Canadian County Bank, 2 Okl. 549, 37 Pac. 1077, upholding Code Civ. Proc., §§ 148-154, relating to arrest and bail of persons fraudulently concealing property to defraud creditors; Gunn v. Union R. R. Co., 27 R. I. 323, 62 Atl. 119, upholding Gen. Laws 1896, c. 251, § 11, authorizing supreme court to direct judgment without further jury trial.

Syl. 3 (V, 578). Usage determines due process of law.

Approved in dissenting opinion in Schick v. United States, 195 U. S. 79, 49 L. 106, 24 Sup. Ct. 826, majority holding persons prosecuted by information under act of 1886, imposing fine for purchasing unmarked oleomargarine may waive jury.

Syl. 4 (V, 578). Due process—Distress warrant by treasury solicitor.

Approved in United States v. Ju Toy, 198 U. S. 263, 273, 49 L. 1044, 1048, 25 Sup. Ct. 644, upholding act of 1894 making departmental decision on right of Chinese to enter conclusive in habeas corpus; Scottish Union etc. Ins. Co. v. Bowland, 196 U. S. 632, 49 L. 628, 25 Sup. Ct. 345, upholding Ohio Rev. St., § 1095, as applied to distraint of personal property of foreign insurance company for personal taxes; Public Clearing House v. Coyne, 194 U. S. 509, 48 L. 1098, 24 Sup. Ct. 789, upholding statutes relating to return to sender of mail addressed to persons under fraud order; Leigh v. Green, 193 U. S. 88, 48 L. 627, 24 Sup. Ct. 390, due process not denied holder of lien on realty by lack of provision in Nebraska statute, for personal service of pendency of proceedings in rem by tax purchaser to enforce lien, where notice is given by publication; McMillan v. Butte, 30 Mont. 227, 76 Pac. 205, upholding act 1897, providing for imposition of street improvement expense according to area. See 101 Am. St. Rep. 606, note.

(V, 575.) Miscellaneous. Cited in United States v. Yeung Chu Keng, 140 Fed. 751, decision of United States commissioner on regular hearing that Chinese is entitled to remain, is bar to complaint in district court based on same facts.

18 How. 289-295, 15 L. 385, KINSMAN v. PARKHURST.

Syl. 5 (V, 583). Appeal—Exceptions to master's report.

Approved in Western Tel. Mfg. Co. v. American Elec. Tel. Co., 137 Fed. 606, arguendo.

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18 How. 307-331, 15 L. 421, EX PARTE WELLS.

Syl. 1 (V, 585). Acceptance of conditional pardon.

See 111 Am. St. Rep. 109, note.

Syl. 2 (V, 585). Pardon defined.

Approved in Territory v. Richardson, 9 Okl. 584, 60 Pac. 245, 49 L. R. A. 440, upholding motion in nature of plea in abatement setting up pardon as defense to indictment.

Syl. 5 (V, 586). Habeas corpus where circuit court remanded.

Approved in Ex parte Moran, 144 Fed. 601, upholding jurisdiction of circuit court of appeals to issue habeas corpus to inquire into power of Oklahoma territorial court to imprison one convicted of capital crime.

18 How. 331-380, 15 L. 401, DODGE v. WOOLSEY.

Syl. 1 (V, 587). Injunction by stockholder against violation of franchise.

Approved in Doctor v. Harrington, 196 U. S. 588, 49 L. 610, 25 Sup. Ct. 355, upholding suit by minority stockholder where corporation is controlled by owner of majority stock and he declines to redress wrongs complained of; Macon etc. R. Co. v. Shailer, 141 Fed. 591, denying right of minority stockholder to set aside sale of corporation's property on ground of fraud by directors where he did not apply to stockholders to act in matter; Columbia etc. Co. v. Washed Bar etc. Co., 136 Fed. 712, appointing receiver at suit of minority stockholders, though corporation solvent, where directors are diverting earnings to themselves; Gibbs v. Morgan, 9 Idaho, 113, 72 Pac. 737, upholding appointment pendente lite of receiver for corporation, under Rev. St., § 4329, subd. 6; Pittsburg etc. Ry. Co. v. Dodd, 115 Ky. 196, 72 S. W. 828, upholding right of minority stockholders to enforce corporation's contract with another corporation where majority stockholders were its officers and also of defendant, which was deriving large profits from breach of contract. See 97 Am. St. Rep. 41, 43, 44, note.

Syl. 4 (V, 593). Federal jurisdiction—Stockholder's suit.

Approved in Consumers' Gas Tr. Co. v. Quimby, 137 Fed. 893, 70 C. C. A. 220, upholding federal jurisdiction over bill by nonresident stockholder who acquired stock from resident of corporation's domicile, to restrain directors from using assets for ultra vires business; Southern Ry. Co. v. Greensboro etc. Co., 134 Fed. 93, upholding federal jurisdiction to enjoin North Carolina corporation from suing for penalties.

Distinguished in Groel v. United Elec. Co., 132 Fed. 254, 256, 261, denying federal jurisdiction over suit by stockholder suing on behalf of corporation to recover secret profits received by another corporation from first company where stockholder and his corporation were citizens of same state.

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Syl. 5 (V, 594). Contracts—Statute incorporating bank and fixing tax.

Approved in State v. Chicago etc. Ry. Co., 128 Wis. 504, 108 N. W. 609, construing street railroad franchise with reference to liability for taxes under subsequent law.

18 How. 385-394, 15 L. 396, WILKINS v. ALLEN.

Syl. 3 (V, 600). Wills—Evidence to explain ambiguities.

Approved in Pate v. Bushong, 161 Ind. 551, 100 Am. St. Rep. 287, 69 N. E. 297, 63 L. R. A. 593, under devise of thirty acres of land of east half of south quarter of section 29, where section contained southeast quarter and southwest quarter, and testator only owned in southwest quarter, title passed to land owned by testator.

18 How. 396-403, 15 L. 433, SOUTH v. STATE OF MARYLAND.

Syl. 1 (V, 601). Only party can bring error.

Approved in Hixon v. Cupp, 5 Okl. 552, 49 Pac. 930, sheriff and sureties are suable jointly for assault on prisoner by another prisoner.

18 How. 404-409, 15 L. 451, LAFAYETTE INS. CO. v. FRENCH.

Syl. 1 (V, 602). Corporations—Averment of citizenship insufficient.

Approved in Knight v. Lutcher etc. L. Co., 136 Fed. 406, 69 C. C. A. 248, following rule; Thomas v. Ohio State University Trustees, 195 U. S. 210, 214, 49 L. 164, 165, 25 Sup. Ct. 24, allegation that board of trustees is citizen of Ohio is insufficient to show it is Ohio corporation where state court has held that statute creating board did not confer corporate powers; Fred Macey Co. v. Macey, 135 Fed. 727, 68 C. C. A. 363, allegation that plaintiff is citizen of certain state is insufficient for federal jurisdiction where elsewhere plaintiff is styled a partnership; Kansas City etc. Ry. Co. v. Prunty, 133 Fed. 15, 66 C. C. A. 163, allegation of residence in petition for removal is insufficient.

Syl. 5 (V, 603). State regulation of foreign corporations.

Approved in Groel v. United Elec. Co., 69 N. J. Eq. 412, 417, 419, 60 Atl. 828, 830, following rule; Pennsylvania etc. Ins. Co. v. Meyer, 197 U. S. 418, 49 L. 816, 25 Sup. Ct. 483, upholding service of summons within state on resident director of foreign insurance as provided by N. Y. Code Civ. Proc., § 432, subd. 3, so as to confer federal jurisdiction; Kibbler v. St. Louis etc. R. Co., 147 Fed. 881, foreign corporation which under state law is suable in state courts only in counties in which it does business, is not suable in federal court in state unless it does business in some county in district; Old Wayne etc. Assn. v. McDonough, 164 Ind. 327, 328, 73 N. E. 705, upholding Pennsylvania statute providing that foreign insurance companies shall stipulate for service of process on insurance commissioner, or agent designated by company; Bruning v. Brotherhood Acc. Co., 191 Mass. 116, 77 N. E. 711, upholding statute providing for service of summons on foreign insurance companies by service on state auditor; United States v.

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Griefen, 70 N. J. L. 124, 56 Atl. 120, upholding statute providing for service of summons on foreign corporations by delivery to insurance commissioner; Hunter v. Mutual Reserve etc. Ins. Co., 184 N. Y. 144, 76 N. E. 1074, where North Carolina statute relating to foreign insurance companies provided that insurance commissioner should be its attorney to receive service of summons, and that power should be irrevocable so long as liability existed, revocation was effective where New York citizens took out policies after revocation and who thereafter assigned claims to citizens of North Carolina; Fisher v. Traders' Mut. Life Ins. Co., 136 N. C. 223, 48 S. E. 669, upholding Pub. Laws 1901, p. 66, c. 5, requiring foreign corporations doing business in state to have agent in state to receive service of summons, or if no agent appointed, process to be served on secretary of corporation commission; Standard Oil Co. v. Commonwealth, 104 Va. 685, 52 S. E. 390, applying principle to statute imposing license fee on foreign corporations authorized to exercise powers of transportation company; dissenting opinion in Security etc. Ins. Co. v. Prewitt, 202 U. S. 261, 265, 50 L. 1020, 1021, 26 Sup. Ct. 619, majority upholding Kentucky statute to effect that if foreign insurance company removes suit to federal court, its license to do business in state shall be revoked, and affirming Prewitt v. Security etc. Ins. Co., 119 Ky. 327, 83 S. W. 612.

Syl. 6 (V, 608). Corporations do not pass state limits.

Approved in Williams v. Metropolitan etc. Co., 68 Kan. 22, 74 Pac. 602, 64 L. R. A. 794, foreign corporation, being "out of the state" within meaning of Code, § 21, cannot take advantage of statute of limitations.

Syl. 7 (V, 609). Judgment—Waiver of misnomer.

Approved in Burlington etc. R. R. Co. v. Burch, 17 Colo. App. 497, 69 Pac. 7, where A B railroad owned and operated road on which damage done, and it was called the B road in state where damage done, though that was not its name, and it was sued and defended under such name, judgment against B was binding against A B road. See 100 Am. St. Rep. 332, note.

18 How. 413-418, 15 L. 455, CONVERSE v. BURGESS.

Syl. 1 (V, 611). Reappraisement by merchant appraisers.

Approved in United States v. Curnen, 146 Fed. 48 (reversing 136 Fed. 807), where reappraisement is void, but local appraisement valid, duty assessed on value found by local appraiser; United States v. Murphy, 136 Fed. 812, and Curnen v. United States, 136 U. S. 808, both holding reappraisement by general appraisers void as to merchandise not actually present nor represented by samples.

18 How. 418-420, 15 L. 395, STOCKTON v. FORD.

Syl. 1 (V, 612). Res adjudicata—Questions necessarily involved.

Approved in Georgia etc. Banking Co. v. Wright, 132 Fed. 917, state court decision in suit between state and corporation to effect

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that charter was contract limiting tax on corporation concludes state in subsequent suit for taxes of different year under different statute; Third Nat. Bank v. Atlantic City, 130 Fed. 754, 65 C. C. A. 177, decree pro confesso in action to establish complainant's right to a fund where grounds of right set out is conclusive against defaulting defendant as to any claim which might have been set up in answer, whether or not bill correctly recited claim.

18 How. 421-459, 15 L. 435, STATE OF PENNSYLVANIA v. WHEELING AND BELMONT BRIDGE CO.

Syl. 1 (V, 613). Congress determines what obstructs navigation.

Approved in United States v. Union Bridge Co., 143 Fed. 386, 387, upholding Comp. St. 1901, p. 3345, requiring alteration of bridges over navigable streams whenever Secretary of War decides they obstruct navigation; United States v. Parkerburg Branch R. Co., 143 Fed. 230, railroad bridge over navigable stream built under congressional act which contains no reservation as to repeal or modification can be removed only in accordance with 30 Stat. 1121.

Syl. 3 (V, 616). Commerce—Congressional regulation prohibits state.

Cited in Missouri v. Illinois, 200 U. S. 519, 50 L. 578, 26 Sup. Ct. 268, arguendo.

Syl. 8 (V, 619). Legalizing act does not affect decree.

Approved in State v. Van Huse, 120 Wis. 21, 97 N. W. 506, Laws 1903, p. 234, c. 160, legalizing attempted organization of school district is not void as retroacting upon past controversy in which no judgment rendered prior to its enactment.

18 How. 460-463, 15 L. 449, STATE OF PENNSYLVANIA v. WHEELING AND BELMONT BRIDGE CO.

Syl. 1 (V, 619). Costs in supreme court.

Approved in Missouri v. Illinois, 202 U. S. 599, 50 L. 1161, 26 Sup. Ct. 713, upholding allowance of costs to defendants on dismissal of bill in action between states.

18 How. 467-470, 15 L. 460, WOOD v. DAVIS.

Syl. 1 (V, 619). Removal—Joinder of nominal parties.

Approved in Cella v. Brown, 136 Fed. 442, following rule; Boatmen's Bank v. Fritzlin, 135 Fed. 658, 68 C. C. A. 288, applying rule in controversy involving validity of mortgages; Groel v. United Elec. Co., 132 Fed. 254, in determining federal jurisdiction over suit by stockholder on right of action in corporation, corporation aligned with complainant or defendant according to facts.

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18 How. 473-475, 15 L. 457, LEDOUX v. BLACK.

Syl. 1 (V, 621). Imperfect Spanish title inferior to subsequent survey.

Approved in Territory v. Delinquent Taxpayers, 12 N. M. 175, 76 Pac. 318, imperfect grant not taxable until confirmation of survey by court of private land claims.

18 How. 480-489, 15 L. 499, BACON v. ROBERTSON.

Syl. 1 (V, 622). Dissolution of corporation—Right to funds.

Approved in Hopkins v. Crossley, 138 Mich. 565, 101 N. W. 823, where volunteer fire department incorporated, funds of which to be used for relief purposes, and funds derived principally from members and on dissolution of corporation fund put in trust for specified purpose, fund did not escheat on failure of trust; Lindemann v. Rush, 125 Wis. 231, 232, 104 N. W. 125, 126, under Rev. St. 1898, § 1764, providing that after expiration of life of corporation, directors may continue business for three years to wind up business, action to wind up affairs of corporation may be prosecuted more than three years after termination of life of corporation.

18 How. 497-503, 15 L. 469, BEAUREGUARD v. CITY OF NEW ORLEANS.

Syl. 1 (V, 625). Federal courts follow state law.

Approved in Southern Pac. Co. v. Western Pac. Ry. Co., 144 Fed. 179, applying rule in suit to determine title to tide lands along Oakland waterfront; Succession of Hasling (Hasling v. Martin), 114 La. 296, 38 So. 174, validity of will made in Louisiana by citizen thereof bequeathing Mississippi lands, depends on Mississippi law.

Syl. 2 (V, 625). Judicial sale is in rem.

Approved in Clark v. Rossier, 10 Idaho, 359, 78 Pac. 360, following rule.

18 How. 503-507, 15 L. 472, UNION BANK OF TENNESSEE v. VAIDEN.

Syl. 1 (V, 626). State laws limiting remedies—Federal courts.

Approved in Alice E. Min. Co. v. Blanden, 136 Fed. 254, upholding federal jurisdiction over claim against estate of decedent, though state law limits right to establish claims to probate proceedings; Barber etc. Pav. Co. v. Morris, 132 Fed. 949, 950, 67 L. R. A. 761, 66 C. C. A. 55, Duluth charter providing for appeals from allowance or rejection of claims to district court and prohibiting payment of claims pending appeal, does not affect federal jurisdiction over such claims not presented to council; dissenting opinion in Moore v. Fidelity Trust Co. (Memorandum), 138 Fed. 1009, majority holding where surviving partner of executor of deceased

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partner's estate which was in probate in state court, bill by distributee to compel accounting by surviving partner not maintainable in federal court; Schurmeier v. Connecticut etc. Ins. Co., 137 Fed. 44, 69 C. C. A. 22, arguendo.

18 How. 511-517, 15 L. 506, MAXWELL v. NEWBOLD.

Syl. 1 (V, 630). Record must show federal questions raised.

Approved in Giles v. Teasley, 193 U. S. 160, 48 L. 659, 24 Sup. Ct. 359, denying jurisdiction to review state court judgment sustaining demurrer to petition for damages for refusal to register negro, where decision rendered on nonfederal ground; Hutchinson v. Morris, 190 Mo. 677, 89 S. W. 871, where record showed verdict "we, the jury, find, etc.," signed "F. Foreman Jury," it did not present constitutionality of majority verdict law.

18 How. 521-530, 15 L. 474, STAIRS v. PEASLEE.

Syl. 1 (V, 633). Tariff—Value at markets of importing country.

Approved in Myers v. United States, 140 Fed. 652, export duty imposed by Quebec, is imposed by "country or dependency" within Comp. St. 1901, p. 1671.

18 How. 530-539, 15 L. 511, HUDGINS v. KEMP.

Syl. 2 (V, 634). Certiorari to correct transcript.

Approved in Flickinger v. First Nat. Bank, 145 Fed. 164, fact that transcript does not contain all evidence upon which order appealed from made is not ground for striking it from files.

Syl. 6 (V, 636). Appellate practice not controlled by state law.

Approved in La Conner Trading etc. Co. v. Widmer, 136 Fed. 178, 69 C. C. A. 193, objection that appeal bond does not conform to rules and that it only binds appellant for judgment of court of appeals is not ground for dismissal of appeal.

18 How. 581-584, 15 L. 492, CROCKETT v. STEAMBOAT ISAAC NEWTON.

Syl. 1 (V, 641). Collision—Duties of steamer and ship meeting.

Approved in Brigham v. Luckenbach, 140 Fed. 332, schooner sailing close-hauled not in fault for collision with tug because she kept course unless change required by special circumstances.

18 How. 588-591, 15 L. 495, UNITED STATES v. SHACKLEFORD.

Syl. 1 (V, 644). Challenges to jurors.

Approved in Sawyer v. United States, 202 U. S. 161, 163, 164, 50 L. 977, 978, 979, 26 Sup. Ct. 575, upholding conditional challenge of jurors by government in criminal case.

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XIX HOWARD.

19 How. 9-16, 15 L. 565, EX PARTE SECOMBE.

Syl. 1 (V, 649). Court fixes qualifications of attorneys.

Approved in In re Branch, 70 N. J. L. 548, 57 Atl. 431, holding void act of 1903, requiring supreme court to recommend certain law clerks for admission to bar.

19 How. 22-56, 15 L. 534, THOMAS v. OSBORN.

Syl. 6 (V, 653). Master's right to bind ship for supplies.

Approved in The Surprise, 129 Fed. 881, 882, 64 C. C. A. 309, holding persons furnishing wharfage to vessel in foreign port on order of master are entitled to lien though vessel operating under charter.

Syl. 7 (V, 653). Maritime lien for supplies—Necessity for credit.

Approved in The Alcalde, 132 Fed. 578, denying maritime lien for moneys advanced master to pay crew and purchase supplies, where receiver had been appointed for ship; The Surprise, 129 Fed. 875, 879, 64 C. C. A. 309, determining right to lien for supplies furnished in foreign port on order of master of vessel navigated under charter.

19 How. 69-72, 15 L. 533, MOORE v. GREENE.

Syl. 4 (V, 657). Facts constituting fraud must be alleged.

Approved in Williamson v. Beardsley, 137 Fed. 469, 69 C. C. A. 615, in suit to set aside probate sale, allegations that sale fraudulent and that proceedings fraudulently conducted without averment of substantive facts justifying charge of fraud, insufficient; Succession of Dauphin (Choppin v. Dauphin), 112 La. 140, 36 So. 300, mere general statement that discovery of fraud made within year is insufficient, where circumstances show probability that it was made sooner.

19 How. 79-82, 15 L. 549, WILLOT v. SANFORD.

Syl. 1 (V, 660). Unconfirmed Spanish grant has no standing.

Approved in Catron v. Laughlin, 11 N. M. 633, 72 Pac. 32, confirmation by Congress of Mexican grant is adjudication that title is valid.

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19 How. 82-92, 15 L. 554, VANDEWATER v. MILLS (THE YANKEE BLADE).

Syl. 1 (V, 660). Nature of maritime lien.

Approved in The San Rafael, 141 Fed. 281, applying rule to maritime tort; Guffey v. Alaska etc. S. S. Co., 130 Fed. 273, 64 C. C. A. 517, under bill of lading reciting goods were to be shipped on defendant's vessel "now" at certain dock, and complainant knew vessel was at sea, and goods never delivered to master, vessel not subject to lien for breach of contract; The Mary F. Chisholm, 129 Fed. 818, sale by merchant to fisherman about to enter on voyage under lay contract of tobacco, clothing and other articles for personal use, is not maritime contract; The James F. Furber, 129 Fed. 812, lease of space at wharf for use by vessel at fixed annual rental is not admiralty contract.

Syl. 2 (V, 662). Lien between ship and cargo.

Approved in Guffey v. Alaska etc. S. S. Co., 130 Fed. 274, 64 C. C. A. 517, under bill of lading reciting goods were to be shipped on defendant's vessel "now" at certain dock and complainant knew vessel was at sea, and goods never delivered to master, vessel not subject to maritime lien for breach of contract. See 105 Am. St. Rep. 350, note.

Syl. 4 (V, 663). Maritime contract—Traffic agreements.

Approved in Graham v. Oregon etc. Nav. Co., 134 Fed. 463, agreement between railroad and owner of steamers by which steamers were to be used as part of through line and parties were to divide receipts is not maritime contract.

19 How. 96-107, 15 L. 577, SEYMOUR v. McCORMICK.

Syl. 1 (V, 664). Patents—Disclaimer necessary to recover costs.

Distinguished in Johnson v. Foos Mfg. Co., 141 Fed. 89, 90, though no disclaimer filed complainant may recover costs in appellate court where decree of dismissal is erroneous and complainant was compelled to appeal to obtain relief.

Syl. 4 (V, 665). Patents—Unreasonable delay in disclaiming.

Approved in Rawson etc. Mfg. Co. v. Hunt Co., 147 Fed. 241, where drawings and descriptions of reissue are identical with those of original, validity of original not affected by invalidity of reissue.

19 How. 150-162, 15 L. 618, POST v. JONES.

Syl. 5 (V, 672). Amount of salvage in derelict cases.

Approved in The Myrtle Tunnel, 146 Fed. 331, allowing salvors of derelict half of proceeds of sale of vessel and cargo where salvage performed with great skill and with considerable trouble and risk;

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Parker v. Hill, 185 Mass. 16, 69 N. E. 337, determining compensation of trustees under will.

19 How. 162-182, 15 L. 584, DUPONT DE NEMOURS v. VANCE.

Syl. 4 (V, 674). Liability of ship to cargo owner.

Approved in The Presque Isle, 140 Fed. 205, libelant, a lake carrier, contracting for carriage of goods from New York to Chicago and afterward chartering canal boat to carry cargo from New York to Buffalo, may sue in rem against canal boat for damages to cargo during shipment.

Syl. 6 (V, 675). Loss of lien for general average by delivery.

Approved in Portland etc. Mills Co. v. Portland etc. S. S. Co., 145 Fed. 692, provision in bill of lading that cargo be delivered to person named on payment of freight, does not impose on owner duty of insisting on payment of freight before delivery.

Syl. 7 (V, 675). Variance in admiralty pleading.

Approved in The Saranac, 132 Fed. 939, where libel alleged generally that hatch improperly constructed, it may be amended during trial by setting out particulars in which hatch was defective.

19 How. 183-199, 15 L. 595, BROWN v. DUCHESNE.

Syl. 1 (V, 677). Construction of statutes as whole.

Approved in United States v. Ninety-nine Diamonds, 139 Fed. 965, 2 L. R. A. (N. S.) 185, one declaring himself owner of imported goods is guilty of offense under Comp. St. 1901, p. 1895, where he had lien on goods and option to purchase and government not deprived of duties.

19 How. 211-224, 15 L. 605, HARTSHORN v. DAY.

Syl. 3 (V, 680). Impeachment of contract at law for fraud.

Approved in Heck v. Missouri etc. Ry. Co., 147 Fed. 781, fact that plaintiff induced to sign release by false representations as to its contents does not avoid its effect as defense at law where it was signed knowingly and for consideration; Stephenson v. Supreme Council A. L. H., 130 Fed. 492, where beneficiary in life insurance certificate after death of insured was induced by false statements made by representatives of association to settle claim, remedy is in equity; Broyles v. Alsher, 107 Mo. App. 177, 80 S. W. 705, under plea of non est factum to action on note, defendant may show that owing to his illiteracy by misreading paper to him, he signed instrument other than one intended.

Syl. 5 (V, 681). Fraud as defense at law on contract.

Approved in Rogers v. Virginia-Carolina etc. Co., 149 Fed. 13, applying rule in action for fraud based on scheme to prevent exercise by plaintiff of options for purchase of lands; Levin v. Northwestern

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Nat. Ins. Co., 146 Fed. 77, award of arbitrators fixing loss on fire policy not impeachable at law.

19 How. 271-279, 15 L. 633, HIPP v. BABIN.

Syl. 1 (V, 688). Equity—Adequacy of law remedy.

Approved in Ames Realty Co. v. Big Indian Min. Co., 146 Fed. 176, federal equity court will enforce Montana statute permitting all persons diverting water from same stream to be made parties to action for protection of water rights; General Elec. Co. v. Westinghouse Elec. & Mfg. Co., 144 Fed. 466, refusing to enjoin violation of contract for manufacture and sale of electric equipment which provided for payment as liquidated damages of percentage of sales; Indian Land & T. Co. v. Shoenfelt, 135 Fed. 485, 68 C. C. A. 196, denying jurisdiction to enjoin single trespass on agricultural land where probable injury not shown to be irremediable; American Lighting Co. v. Public Service Corp., 134 Fed. 131, refusing to punish as contempt violation of injunction granted in case where there was adequate remedy at law; Kane v. Luckman, 131 Fed. 618, denying jurisdiction to decree specific performance of contract for sale to plaintiff of certain number of cows at certain price, where cows not shown to have peculiar value; Allen v. Myers, 1 Alaska, 117, dismissing suit to quiet title after applicant for patent has initiated proceedings in land office under Rev. St., §§ 2325, 2326; Shields v. Johnson, 10 Idaho, 482, 79 Pac. 393, neither party to suit brought by possessor to quiet title to leasehold estate is entitled to jury; Glenn v. West, 103 Va. 524, 49 S. E. 672, holder of merely equitable title out of possession cannot quiet title against party in possession claiming under tax title; dissenting opinion in Barnes v. Newton, 5 Okl. 458, 460, 49 Pac. 1080, 1081, majority holding where final decision is rendered by land department in favor of one party, he may enjoin further occupancy of premises by defeated party.

Syl. 2 (V, 692). Dismissal of equity suit on legal title.

Approved in Indian Land & T. Co. v. Shoenfelt, 135 Fed. 486, 68 C. C. A. 196, denying jurisdiction to enjoin single trespass on agricultural land where probable injury not shown to be irremediable; Kane v. Luckman, 131 Fed. 621, objection of adequacy of remedy at law may be raised by demurrer and at final hearing.

19 How. 283-287, 15 L. 668, BEEBE v. RUSSELL.

Syl. 1 (V, 693). No appeal where decree not final.

Approved in Ex parte National Enameling etc. Co., 201 U. S. 164, 50 L. 709, 26 Sup. Ct. 404, decree in patent infringement suit granting injunction as to claims held infringed and dismissing case as claims held void, is not final appealable decree as to latter.

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Syl. 2 (V, 695). Decree disposing of whole case is final.

Approved in The Chief, 142 Fed. 352, order in admiralty dismi ing petition filed by claimant of vessel libeled for salvage and whi had been sold in such proceedings, where petition asked to wit draw fraud on substitution of bond, is not final appealable jud ment.

19 How. 289-303, 15 L. 644, BABCOCK v. WYMAN.

Syl. 1 (V, 696). Parol to show deed a mortgage.

Approved in Weiseham v. Hocker, 7 Okl. 254, 54 Pac. 465, follo ing rule; James v. Gray, 131 Fed. 408, 65 C. C. A. 385, arguendo.

19 How. 318-323, 15 L. 636, COMMERCIAL MUT. MARINE IN CO. v. UNION MUT. INS. CO.

Syl. 1 (V, 699). Parol agreement for insurance is valid.

Approved in Whitman v. Milwaukee Fire Ins. Co., 128 Wis. 13 5 L. R. A. (N. S.) 407, 107 N. W. 293, oral contract of fire insu ance is valid.

Distinguished in Delaware Ins. Co. v. Pennsylvania Ins. Co., 1 Ga. 386, 55 S. E. 332, contract of fire insurance must be in writi and signed by insurer or his agent.

Syl. 3 (V, 701). Decree in specific performance of contract to i sure.

Approved in Summers v. Mutual Life Ins. Co., 12 Wyo. 390, 1 Am. St. Rep. 1005, 75 Pac. 942, 66 L. R. A. 812, arguendo.

19 How. 355-359, 15 L. 658, WALTON v. COTTON.

Syl. 3 (V, 707). Pensions defined.

Approved in Eddy v. Morgan, 216 Ill. 449, 75 N. E. 178, Lav 1899, p. 101, amending act of 1887, giving pension to policema over fifty years of age who has served twenty years, is not retr active.

19 How. 366-373, 15 L. 684, FELLOWS v. BLACKSMITH.

(V, 710.) Miscellaneous. Cited in Keokuk v. Ulam, 4 Okl. 15, 3 Pac. 1084, where Indian tribe is located on reservation which is afte ward included in organized county, Indians are "persons" whose pe sonal property is taxable.

19 How. 393-633, 15 L. 691, DRED SCOTT v. SANFORD.

Syl. 6 (V, 715). Negro descendants of slaves not citizens.

Cited in dissenting opinion in Booth v. Weigand, 28 Utah, 397, 7 Pac. 576, arguendo.

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Syl. 13 (V, 718). Effect of public opinion on constitutional construction.

Approved in South Carolina v. United States, 199 U. S. 449, 50 L. 264, 26 Sup. Ct. 110, upholding federal license tax on state dispensers of liquor.

Syl. 15 (V, 718). Decision on plea in abatement as bar.

Approved in International etc. R. Co. v. Hoyle, 149 Fed. 182, where controversy which was removed by one of two joint defendants was not reviewable because of want of separable controversy, cause is remandable at instance of any party.

Syl. 16 (V, 718). Congressional control over territories.

Approved in Allen v. Reed, 10 Okl. 111, 60 Pac. 784, holding void act 1893, relating to changing of county seats as inconsistent with act of Congress relating to opening of Cherokee outlet; Ex parte Anderson, 46 Tex. Cr. 380, 81 S. W. 976, city court has no jurisdiction to try accused for violation of state penal offense.

Syl. 32 (V, 721). Congressional regulation of territories.

Approved in Dorr v. United States, 195 U. S. 142, 146, 49 L. 130, 132, 24 Sup. Ct. 808, upholding act for temporary government of Philippines though trial by jury not provided therein.

Syl. 34 (V, 722). No complaint against advantageous error.

Approved in Alexander v. Crollott, 199 U. S. 581, 50 L. 317, 26 Sup. Ct. 161, arguendo.

XX HOWARD.

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20 How. 6-8, 15 L. 801, GARLAND v. WYNN.

Syl. 1 (V, 726). Fraudulent land patent set aside.

Approved in Smith v. Love, 49 Fla. 239, 38 So. 379, following rule; Le Marchel v. Teegarden, 133 Fed. 827, one attacking land patent for mistake of fact must plead and prove evidence before the department from which mistake resulted, particular mistake made, and way in which it occurred.

Distinguished in Estes v. Timmons, 199 U. S. 395, 50 L. 244, 26 Sup. Ct. 85, perjury on hearing before land department of contest over homestead entry, is not ground for equitable relief; Estes v. Timmons, 12 Okl. 543, 73 Pac. 305, holding insufficient petition to declare trust in lands where facts constituting fraud not set out; Laramie Nat. Bank v. Steinhoff, 11 Wyo. 310, 71 Pac. 995, where no patent issued court cannot determine title.

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Syl. 2 (V, 726). Jurisdiction where Land Department decid claims.

Approved in United States v. Detroit Timber etc. Co., 200 U. 339, 50 L. 506, 26 Sup. Ct. 282, bona fide purchaser of standing ti ber from holders of receiver's receipts for purchase of lands enter under timber act need not, on avoidance of patent for entrymen fraud, account to government for cut.

20 How. 8-22, 15 L. 805, JONES v. McMASTERS.

Syl. 3 (V, 728). Titles acquired under foreign government.

Approved in Louisville Property Co. v. Nashville, 114 Tenn. 22 84 S. W. 812, purchaser of realty by foreign corporation which h not complied with statute relating to foreign corporations is not u lawful.

20 How. 29-34, 15 L. 824, DOSWELL v. DE LA LANZO.

Syl. 2 (V, 730). Adverse possession—Privity necessary.

Approved in Zweibel v. Myers, 69 Neb. 298, 95 N. W. 599, follo ing rule.

20 How. 34-44, 15 L. 813, WADE v. LEROY.

Syl. 1 (V, 731). Damages—Evidence of plaintiff's business.

Approved in Jordan v. Cedar Rapids etc. Ry. Co., 124 Iowa, 18 99 N. W. 695, admitting evidence of occupation and earnings in pe sonal injury case; Nichols v. Oregon etc. R. R. Co., 28 Utah, 33 78 Pac. 868, in action for injuries to passenger, loss of memory a impairment of mental faculties is proper element of damages.

20 How. 65-84, 15 L. 838, DYNES v. HOOVER.

Syl. 1 (V, 734). Punishment by court-martial.

Approved in United States v. Praeger, 149 Fed. 484, decision court-martial that questions which civilian witness refused to answ on ground that answer might tend to incriminate him, were prope is not conclusive on civil courts of question of witness' contempt refusing to answer.

Syl. 3 (V, 734). Court-martial's sentence, when confirmed, final.

Approved in United States v. Praeger, 149 Fed. 485, decision court-martial that questions which civilian witness refused to answ on ground that answers might tend to incriminate him, were prope is not conclusive on civil courts of question of witness' contempt refusing to answer.

Syl. 4 (V, 735). Requisites of valid court-martial sentence.

Approved in Hamilton v. McClaughry, 136 Fed. 447, following rul

Syl. 5 (V, 735). Court-martial sentence defense to false impriso ment.

Cited in Thornton-Thomas Co. v. Bretherton, 32 Mont. 96, 80 Pa 14, arguendo. See 111 Am. St. Rep. 936, note.

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20 How. 84-94, 15 L. 816, WITHERS v. BUCKLEY.

Syl. 3 (V, 736). State may improve navigable rivers.

Approved in Manigault v. Springs, 199 U. S. 482, 50 L. 279, 26 Sup. Ct. 127, upholding South Carolina act of 1903, providing for erection of dam across interior stream formerly navigable, for purpose of draining low lands; Maine Water Co. v. Knickerbocker Steam Towage Co., 99 Me. 475, 59 Atl. 954, water pipe-line laid across Kennebec river by authority of legislature in accordance with plans recommended and authorized by War Department, is not unlawful obstruction.

20 How. 94-108, 15 L. 833, SECOMBE v. STEELE.

Syl. 2 (V, 737). Agreement to pay price and deliver deed.

Approved in Early Times Distil. Co. v. Zeiger, 11 N. M. 233, 67 Pac. 737, following rule; Miller v. Bronson, 26 R. I. 63, 58 Atl. 257, where on date fixed for performance vendee refused to take land because of existence of mortgage, and later mortgage released, but no notice given vendee of release for six months, specific performance denied.

Syl. 5 (V, 738). Specific performance—Decree transferring title.

Approved in Bridger v. Exchange Bank, 126 Ga. 827, 56 S. E. 100, lis pendens affects not only purchaser from one of parties to suit, but also those who hold by conveyances under him.

20 How. 128-133, 15 L. 845, MATTINGLY v. BOYD.

Syl. 2 (V, 739). Garnishment against agent suspends limitations.

Approved in Barton v. Spencer, 3 Okl. 274, 41 Pac. 606, 608, subsequent attaching creditors obtain no rights in garnished property as against creditor causing garnishment to issue.

20 How. 135-149, 15 L. 858, SMITH v. CORPORATION OF WASHINGTON.

Syl. 2 (V, 741). City's liability for change of street grade.

Approved in Sauer v. New York, 180 N. Y. 33, 72 N. E. 580, 70 L. R. A. 717, erection, under statutory authority, of elevated viaduct by city in street of which it owns fee, does not entitle abutting owner to damages.

20 How. 149-156, 15 L. 847, LYON v. BERTRAM.

Syl. 1 (V, 742). Warranty—Remedy on breach.

Approved in Thomas China Co. v. C. W. Raymond Co., 135 Fed. 27, 67 C. C. A. 629, upholding counterclaim for breach of contract in sale of machinery; Williams v. Neely, 134 Fed. 6, 69 L. R. A. 232, 67 C. C. A. 171, enjoining action at law on purchase money note until defense of reduction pro tanto because of defect in title, is allowed.

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Syl. 2 (V, 743). Sale not repudiatable after part performance.

Approved in Henderson Elev. Co. v. North Georgia Milling Co., 126 Ga. 282, 55 S. E. 52, following rule; Harding v. York Knitting Mills, 142 Fed. 232, applying rule to contract for purchase of yarn deliverable in weekly installments.

20 How. 170-176, 15 L. 874, HYDE v. STONE.

Syl. 1 (V, 745). Jurisdiction—State laws—Pending state suits.

Approved in Slaughter v. Mallet Land etc. Co., 141 Fed. 290, pendency of state suit to try title to land and remove cloud is not ground for abatement of subsequent federal suit between same parties to quiet title; Barber Asphalt Pav. Co. v. Morris, 132 Fed. 950, 67 L. R. A. 761, 66 C. C. A. 55, Duluth charter providing for appeals from allowance or rejection of claims to county court does not affect federal jurisdiction over claims.

20 How. 176-186, 15 L. 891, LEITENSDORFER v. WEBB.

Syl. 4 (V, 748). Final appealable order.

Approved in Jung v. Myer, 11 N. M. 391, 68 Pac. 937, order vacating attachment is not final appealable order.

20 How. 198-204, 15 L. 876, DEAN v. MASON.

Syl. 2 (V, 759). Appeal—Answer after decree pro confesso.

Approved in Vicksburg v. Vicksburg Water Works Co., 202 U. S. 462, 50 L. 1108, 26 Sup. Ct. 660, upholding permission to withdraw bill in nature of supplemental bill, and suppressing testimony on issue raised thereby.

20 How. 221-227, 15 L. 884, McGAVOCK v. WOODLIEF.

Syl. 2 (V, 752). Broker's commissions—Finding purchaser.

Approved in Czarnowski v. Holland, 5 Ariz. 121, 78 Pac. 891, in action by real estate broker for commissions, evidence of proposed purchaser's financial ability to perform contract is admissible; Colburn v. Seymour, 32 Colo. 433, 76 Pac. 1059, holding erroneous instruction that if vender refused to consummate sale on grounds other than purchaser's ability to pay, it is presumed he was able to pay; Ball v. Dolan, 18 S. D. 565, 101 N. W. 721, where broker employed to sell nineteen tracts, at $9 per acre, at $1 per acre commission, instruction that if he procured purchaser ready and able to buy all land, he was entitled to commissions, though owner sold sixteen tracts at less price, was erroneous.

20 How. 227-234, 15 L. 896, COVINGTON DRAWBRIDGE CO. v. SHEPHERD.

Syl. 1 (V, 754). Federal courts judicially notice state law.

See 113 Am. St. Rep. 873, note.

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Syl. 2 (V, 754). Federal jurisdiction—Citizenship of corporation.

Approved in Thomas v. Ohio State University Trustees, 195 U. S. 210, 49 L. 164, 25 Sup. Ct. 24, denying federal jurisdiction over suit by Ohio State University trustees, where Ohio court had held statute creating board did not confer corporate powers; Davis v. Chesapeake etc. Ry. Co., 116 Ky. 151, 75 S. W. 277, compliance by foreign corporation with statutes providing that such corporations cannot exercise power of eminent domain until they become domestic does not deprive it of power to remove suit to federal courts.

20 How. 235-251, 15 L. 886, WHITE v. BARNLEY.

Syl. 7 (V, 756). Adverse possession of conflicting grants.

Approved in Henry v. Brown, 143 Ala. 456, 39 So. 328, where vendor conveys two distinct tracts, to only one of which he has title, entry and occupation of that tract by grantee is not disseisin of owner of other; Harriss v. Howard, 126 Ga. 329, 55 S. E. 60, where two adjacent owners are in constructive possession of same land under conflicting descriptions, rights determined according to superiority of title.

20 How. 252-255, 15 L. 900, UNITED STATES v. BREITLING.

Syl. 1 (V, 757). Practice relative to bill of exceptions.

Approved in Montana Min. Co. v. St. Louis Min. etc. Co., 147 Fed. 909, under circuit court rule relating to exceptions to instructions, where court, after instructing jury, but before sending them out, heard and allowed exceptions in chambers, he did not need to afterward allow further exceptions.

Syl. 2 (V, 757). Exception must show it taken at trial.

Approved in Vernon v. United States, 146 Fed. 122, assignments of error cannot be reviewed where no exceptions taken at trial.

20 How. 255-260, 15 L. 799, HEMMENWAY v. FISHER.

Syl. 2 (V, 759). Interest in admiralty.

Approved in The Rickmers, 142 Fed. 314, upholding allowance of interest on damages awarded for collision from time vessel repaired and reloaded.

Distinguished in Burrows v. Lownsdale, 133 Fed. 251, 66 C. C. A. 650, interest not allowable on damages awarded in admiralty for personal injury.

20 How. 264-280, 15 L. 902, SPENCER v. LAPSLEY.

Syl. 2 (V, 760). Plea in abatement waived by plea to merits.

Approved in McFadden v. Heisen, 150 Fed. 570, agreement to dismiss pending suit made out of court, and not presented to court, is waived by answering amended bill on merits; Wetzel etc. Ry. Co. v. Tennis Bros. Co., 145 Fed. 464, where in action by foreign corporation defendant filed answer and cross-bill after demurrer overruled, and

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also replication to answer to cross-bill, it is too late to plead plain tiff's disability to sue for failure to comply with state laws.

20 How. 290-296, 15 L. 822, SILSBY v. FOOTE.

Syl. 1 (V, 762). Appeal as supersedeas.

Distinguished in In re McCall, 145 Fed. 901, time for review o order confirming bankrupt's composition begins to run from entry o confirmation order.

Syl. 2 (V, 762). Second appeal dismissed where first regular.

Approved in Northern Pac. Ry. Co. v. Ely, 197 U. S. 3, 49 L. 640 25 Sup. Ct. 302, following rule.

20 How. 343-372, 15 L. 934, GOODMAN v. SIMONDS.

Syl. 2 (V, 764). Consideration—Surrender of collateral and exten sion of time.

Approved in Chesapeake S. S. Co. v. Merchants' Nat. Bank, 10 Md. 593, 63 Atl. 115, where consignee of cotton pledged bills of lading to bank, in exchange for other bills previously pledged and held by bank as collateral security, pledge based on sufficient consideration

Syl. 4 (V, 765). Notes—Bona fide purchaser—Suspicion of de fects.

Approved in First Nat. Bank v. Moore, 148 Fed. 957, following rule; Union Nat. Bank v. Neill, 149 Fed. 714, applying rule where member of trading partnership signed firm name as accommodation indorser; Massachusetts National Bank v. Snow, 187 Mass. 163, 72 N E. 960, note which is complete and payable to bearer, taken from thief, is valid in hands of holder in due course; Hallock v. Young, 7 N. H. 420, 57 Atl. 237, fact that indorsee of notes knew nothing o makers or of financial ability of indorser, and very little of his char acter, does not affect his bona fides; Merchants' etc. Nat. Bank v Ohio Valley Furniture Co., 57 W. Va. 629, 630, 50 S. E. 881, 882, 7 L. R. A. 312, applying rule where bank discounted negotiable pape with knowledge that person discounting it was mere agent.

20 How. 393-402, 15 L. 96, PEOPLE'S FERRY CO. v. BEERS.

Syl. 1 (V, 772). Admiralty jurisdiction over contracts.

Approved in The Mary F. Chisholm, 129 Fed. 817, denying admiralty jurisdiction over sale to fisherman about to go on voyage on lay contract of tobacco, clothing and other articles for personal use.

Syl. 2 (V, 773). Admiralty—Contract for construction of vesse not maritime.

Approved in The Winnebago, 141 Fed. 949, upholding Michigan Comp. Law, c. 298, giving lien to contractors and persons furnishing labor and materials in construction of vessels; Arnold v. Eastin, 11 Ky. 708, 76 S. W. 859, contract for material for construction b dock, reserving lien thereon to seller, is not maritime contract

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Delaney etc. Co. v. The Winnebago, 142 Mich. 88, 105 N. W. 529, upholding Comp. Laws 1897, § 10,789, creating lien for materials furnished for original construction of vessel.

20 How. 402-412, 15 L. 930, McCORMICK v. TALCOTT.

Syl. 1 (V, 775). Patent infringement—Use of equivalents.

Approved in Marconi Wireless Tel. Co. v. De Forest Wireless Tel. Co., 138 Fed. 678, Marconi reissue No. 11,913, for wireless telegraphy apparatus, infringed as to claims 3 and 5 by De Forest patent, but not as to claims 8, 10 and 24.

Syl. 2 (V, 776). Patents—Improvement—Combination of parts.

Approved in Standard etc. Co. v. Ramsay, 143 Fed. 975, construing Muckle and Teamer patent No. 555,825, for locking device for elevators; Mallon v. Wm. C. Gregg & Co., 137 Fed. 80, 69 C. C. A. 48, Mallon patent No. 583,408, for automatic mechanism for unloading and feeding sugar cane valid, but not infringed by machine described in Gregg patent No. 670,176; Greene v. Buckley, 135 Fed. 531, 68 C. C. A. 70, construing Buckley patent No. 590,297, for force-feed lubricator; Raymond v. Keystone Lantern Co., 134 Fed. 868, 67 C. C. A. 492, construing Wright patent No. 476,506, for improvement in wick-raiser attachments for lanterns; Cook v. Heywood Bros. etc. Co., 131 Fed. 762, Bowen patents No. 667,162, for improvement in chairs, and No. 678,219, for improvement in chairs, not infringed by device of Luffino reissue No. 11,919.

20 How. 427-442, 15 L. 978, SUYDAM v. WILLIAMSON.

Syl. 3 (V, 778). Scope of review on bill of exceptions.

Approved in Nichols v. Board of Commrs. of Weston Co., 13 Wyo. 8, 76 Pac. 682, where final judgment not supported by pleadings or findings, it is reversible on error without bill of exceptions.

Syl. 4 (V, 779). Bill of exceptions necessary to review evidence.

Approved in Metropolitan R. R. Co. v. Macfarland, 195 U. S. 331, 49 L. 223, 25 Sup. Ct. 28, errors in refusal of instructions are not reviewable in absence of bill of exceptions.

Syl. 8 (V, 789). Nature of demurrer to evidence.

Approved in Nashville etc. Ry. Co. v. Sansom, 113 Tenn. 690, 84 S. W. 617, under Shannon's Code, §§ 4689, 4691, where issue is joined on demurrer to plaintiff's evidence, it is too late after argument of demurrer for plaintiff to take nonsuit.

Syl. 12 (V, 781). Writ of error only operates on record.

Approved in Cassett v. Mitchell Coal & Coke Co., 150 Fed. 42, Rev. St., § 724, does not authorize order requiring party to produce books and papers before trial.

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20 How. 442-448, 15 L. 965, BROWN v. WILEY.

Syl. 2 (V, 782). Parol to vary writing.

Approved in Payne v. Mutual Life Ins. Co., 141 Fed. 345, admittin parol evidence of agent's declarations to show bona fides of contrac of life insurance.

20 How. 448-461, 15 L. 950, WARNER v. NORTON.

Syl. 2 (V, 783). Fraud—Failure to change possession on sale.

Approved in Heisch v. Bell, 11 N. M. 529, 70 Pac. 572, bill of sal given by debtor to creditor of personalty of which there is change o possession, is valid between parties whether same is acknowledged an recorded or not.

20 How. 461-467, 15 L. 966, STINSON v. DOUSMAN.

Syl. 3 (V, 783). Amount in dispute on rescission of sale.

Approved in Kirby v. American Soda etc. Co., 194 U. S. 144, 4 L. 912, 24 Sup. Ct. 619, upholding federal jurisdiction where cross bill seeks to recover balance of $1,700 due on contract of exchang where original bill dismissed on complainant's own motion asked cancellation of agreement to pay $2,025; Morris v. Bean, 146 Fed. 429 in suit concerning water rights, where right to use of water exceed in value $2,000, circuit court has jurisdiction; Greenfield v. United States etc. Co., 133 Fed. 787, where plaintiff sued to quiet title and to set aside trust deed and to vacate deed to purchaser under fore closure of such trust deed, but asked in alternative that if deeds b not set aside, she be permitted to redeem, value of land was juris dictional amount.

20 How. 467-486, 15 L. 969, ROBERTS v. COOPER.

Syl. 1 (V, 784). Matters reviewable on second appeal.

Approved in Montana Min. Co. v. St. Louis Min. etc. Co., 147 Fed 904, and Leicher v. Keeney, 110 Mo. App. 297, 85 S. W. 921, both following rule; Southern Illinois etc. Co. v. Stone, 194 Mo. 185, 9 S. W. 477, applying rule in condemnation proceedings.

Syl. 3 (V, 785). Conveyance to one of lands possessed by another

Approved in Chesapeake Beach Ry. Co. v. Washington etc. R. R Co., 199 U. S. 252, 50 L. 178, 26 Sup. Ct. 25, conveyance by disseisi is valid in District of Columbia.

(V, 784.) Miscellaneous. Cited in State v. Jennings, 47 Fla. 321 35 So. 993, reciting history of case.

20 How. 527-530, 15 L. 991, BEERS v. STATE OF ARKANSAS.

Syl. 2 (V, 789). Contracts—Law permitting suit against state.

Approved in Wheeler v. Public School Board of Control, 137 Mich 292, 109 Am. St. Rep. 681, 100 N. W. 394, upholding act of 1903 repealing authorization of school board of control to sue and b

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sued, as applied to contract entered into prior to repeal; Matter of Hoople, 179 N. Y. 312, 72 N. E. 230, under Laws 1900, p. 916, requiring application for refund of tax to be made in two years, application by executor in October 1903, for vacation of order of November 29, 1895, assessing transfer tax, is barred.

20 How. 532-534, 15 L. 1012, BARTON v. FORSYTH.

Syl. 1 (V, 790). Exceptions must be taken at trial.

Approved in dissenting opinion in Owens v. United States, 130 Fed. 286, 64 C. C. A. 525, majority considering, on appeal in criminal case, exceptions to instructions handed to clerk after jury sent out.

20 How. 535-541, 15 L. 1013, WILLIAMS v. GIBBES.

Syl. 1 (V, 790). Reimbursement of trustee for expenses.

Approved in Hunter v. Coe, 12 N. D. 517, 97 N. W. 873, decreeing specific performance of contract for sale of realty on reimbursement of purchaser from vendor for improvements made in good faith; Sunter v. Sunter, 190 Mass. 457, 77 N. E. 498, arguendo.

20 How. 555-557, 15 L. 1021, McCARGO v. CHAPMAN.

Syl. 1 (V, 792). Order quashing execution not final order.

Approved in Anglo-American etc. Co. v. Cheshire Prov. Inst., 134 Fed. 155, arguendo.

(V, 792.) Miscellaneous. Cited in King v. Davis, 137 Fed. 233, as recognizing power of federal courts to vacate judgments of former term.

20 How. 558-571, 15 L. 994, IRVINE v. MARSHALL.

Syl. 2 (V, 792). Resulting trust—Purchaser with another's money.

Approved in Copper River Min. Co. v. McClellan, 2 Alaska, 144, applying rule to location of mining claims; Thompson v. Burk, 2 Alaska, 252, where defendant located placer claim but made no discovery, and plaintiff made subsequent relocation, and thereafter, without notifying defendant of fact, contracted with him to dig discovery shaft on claim in which gold discovered, discovery inured to perfect defendant's senior claim.

Syl. 3 (V, 792). States cannot regulate public lands.

Approved in Peyton v. Desmond, 129 Fed. 10, 63 C. C. A. 651, state statute purporting to regulate effect of land department's final receipts does not affect rights of grantees from United States.

Syl. 7 (V, 793). Equity cases defined.

Approved in In re E. T. Kenney Co., 136 Fed. 454, beneficial interest of assignors in net proceeds of claims against insolvent corporation, assigned to committee after administration of trust by committee, not provable in bankruptcy.

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Syl. 9 (V, 793). Land office practice does not control courts.

Approved in Paine v. Foster, 9 Okl. 275, 60 Pac. 29, setting asid rejection of homesteader's claim by Interior Department becaus of fraud.

20 How. 583-617, 15 L. 1028, TAYLOR v. CARRYL.

Syl. 2 (V, 795). Property in custodia legis not seizable.

Approved in Fountain v. 624 Pieces of Timber, 140 Fed. 382, wher deputy sheriff having writ of attachment went to raft in boat bu did not take possession, no valid levy made as against subsequen seizure by marshal under admiralty process; In re Porterfield, 13 Fed. 197, where deed of trust executed by bankrupt to wife wa recorded less than four months prior to state suit, but more tha four months prior to bankruptcy proceedings petitioning creditors no entitled to distribution of fund under state law declaring prefe ences void; French v. White, 78 Vt. 96, 62 Atl. 36, 2 L. R. A. (N S.) 804, property vesting in bankruptcy trustee under federal law not subject to state attachment.

XXI HOWARD.

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21 How. 35-66, 16 L. 61, UNION INS. CO. v. HOGE.

Syl. 1 (V, 808). Contemporary construction of statutes.

Approved in Westerman v. Supreme Lodge K. of P., 196 Mo. 709 94 S. W. 479, Rev. St. 1899, § 7897, prohibiting forfeiture of lif policy for nonpayment of premiums after payment for three year does not apply to beneficial associations doing business on assess ment plan; State v. Smith, 71 Ohio St. 40, 72 N. E. 306, construin Rev. St. 1892, § 2855, relating to entry by auditor of delinquent ta duplicate.

21 How. 66-80, 16 L. 50, LEGGETT v. HUMPHREYS.

Syl. 1 (V, 810). Surety's responsibility strictly limited by bond.

Approved in Swift v. Jones, 135 Fed. 439, where under contrac employing defendant's son as plaintiff's broker, signed by defendan as guarantor, son required to give fidelity bond for which plaintif to pay premium, and son signed application but bond not obtaine until after defalcation, defendant not liable on guaranty.

21 How. 82-85, 16 L. 31, RICE v. MINNESOTA ETC. R. R. CO.

Syl. 1 (V, 811). Appeal—Amendment of record after term.

Approved in dissenting opinion in State v. Marsh, 134 N. C. 200, 4 S. E. 12, 67 L. R. A. 179, majority granting certiorari to correct recor

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where conviction reversed for omission of material allegation in indictment where allegation in fact contained but omitted from record by misprision of clerk.

21 How. 85-88, 16 L. 32, KELSEY v. FORSYTH.

Syl. 2 (V, 812). Consent does not give jurisdiction.

Approved in Swift v. Jones, 145 Fed. 494, circuit judge in action at law, cannot, though parties consent order trial before special master; Clark v. Doerr, 143 Fed. 961, time for suing out writ of error under Comp. St. 1901, p. 547, cannot be extended by agreement; Wedd v. Gates, 15 Okl. 605, 82 Pac. 809, supreme court cannot review order of district court, where suit for review not commenced until after expiration of one year notwithstanding agreement of parties or general appearance of defendant in error.

21 How. 103-112, 16 L. 33, PENNSYLVANIA v. RAVENEL.

Syl. 2 (V, 814). Evidence of intention to change domicile.

Approved in McCord v. Rosene, 39 Wash. 2, 80 Pac. 793, fact that man lives in hotel while family resides in another state does not affect residence for purpose of limitation of action on foreign judgment.

21 How. 146-170, 16 L. 86, BARREDA v. SILSBEE.

Syl. 1 (V, 816). Contracts—Intention—Surrounding circumstances.

Approved in Cleveland-Cliffs Iron Co. v. East Itasca etc. Co., 146 Fed. 235, 236, construing contract for assignment of mining leases on royalty.

21 How. 170-184, 16 L. 119, UNITED STATES v. SUTTER.

Syl. (V, 820). Mexican grant—Nonconformity with law.

Approved in Catron v. Laughlin, 11 N. M. 634, 72 Pac. 33, where Congress has confirmed Mexican grant to grantees who had not forfeited rights, forfeiture must have taken place prior to cession.

21 How. 184-195, 15 L. 106, THE JAMES GRAY v. THE JOHN FRASER.

Syl. 1 (V, 820). City ordinances regulating shipping.

Approved in Hagan v. City of Richmond, 104 Va. 731, 3 L. R. A. (N. S.) 1120, 52 S. E. 388, where Secretary of War neglects to act in keeping navigable waters unobstructed, local authorities may remove obstructions.

Syl. 6 (V, 822). Collision must be fault of colliding vessel.

Approved in The W. G. Mason, 142 Fed. 918, where two tugs belonging to same owner were towing steamer, and master of leading tug directed steamer's movements, but second tug was under own master's control, as to own movements, rear tug not liable for stranding of tow through fault of leader.

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Distinguished in The Violetta, 141 Fed. 693, 694, tow in control o tug not liable with tug for collision with another vessel.

Syl. 7 (V, 823). Collision—Damages where both at fault.

Approved in Steam Dredge No. 1, 134 Fed. 168, 69 L. R. A. 292 67 C. C. A. 67, dividing damages were government inspector con tributorily negligent was injured by breaking of bitt.

21 How. 202-223, 16 L. 73, PHILADELPHIA ETC. R. R. CO. v QUIGLEY.

Syl. 2 (V, 825). Corporation's liability for acts of agent.

Approved in Stewart v. Wright, 147 Fed. 327, 328, holding bank liable as party to scheme to defraud by means of fake footrace Oklahoma City v. Hill, 6 Okl. 140, 50 Pac. 250, holding city liable fo trespass committed by officers in acquiring possession of realty which city might acquire in lawful manner and by lawful means, and to which city was claiming title under void deed.

Distinguished in Brenner v. Ford, 116 La. 553, 40 So. 896, holding master not liable for death caused by negligence of servant in driv ing team where he had been positively ordered not to drive.

Syl. 6 (V, 829). When exemplary damages awarded.

Approved in Otto Kuehne Pres. Co. v. Allen, 148 Fed. 669, where allegation that defendants' negligence causing death was gross does not authorize exemplary damages under Rev. St. Mo. 1899, § 2866 Western Union Tel. Co. v. Cashman, 132 Fed. 806, 65 C. C. A. 607, re fusing punitive damages for transmission of libelous message by tele graph company; Murray v. Pannaci, 130 Fed. 531, 65 C. C. A. 153 denying exemplary damages where defendants removed sand from beach in front of plaintiff's lot in belief that it was their right Ickenroth v. St. Louis Transit Co., 102 Mo. App. 616, 77 S. W. 168 applying principle in action for assault and battery; Baxter v Campbell, 17 S. D. 480, 97 N. W. 387, in action against surgeon fo malpractice, where compensatory damages alone claimed, error to in struct that punitive damages might be awarded where no malice shown. See 101 Am. St. Rep. 760, note.

21 How. 223-228, 16 L. 96, CAMPBELL v. BOYREAU.

Syl. 1 (V, 832). Appeal—Review where no finding.

Cited in Cassett v. Mitchell Coal & Coke Co., 150 Fed. 43, arguendo

21 How. 228-241, 16 L. 97, FRENCH v. SPENCER.

Syl. 5 (V, 836). Land patent relates to entry.

Approved in United States v. Detroit Timber etc. Co., 200 U. S 335, 50 L. 505, 26 Sup. Ct. 282, bona fide purchaser from patentee o timber lands is entitled to protection though he acquired interest i lands under contract for standing timber before patent issued; United States v. Anderson, 194 U. S. 399, 48 L. 1039, 24 Sup. Ct. 716, govern

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ment cannot retain, as against its grantees of lands within indemnity limits of railroad grant, sum collected from trespassers for removal of stone from land between selection and approval of selection; Miocene Ditch Co. v. Jacobsen, 146 Fed. 683, where complainant appropriated water rights and commenced construction of ditch in 1901, right to acquire right of way over mining claims located in 1902, not affected by failure to complete ditch over claims until after their location; Peyton v. Desmond, 129 Fed. 11, 63 C. C. A. 651, patentee may recover value of timber wrongfully cut and removed after initiation of claim and prior to issuance of patent; Nicholson v. Congdon, 95 Minn. 193, 103 N. W. 1035, subsequent payment and issuance of patent to land protects title as of date of application; Gilbert v. McDonald, 94 Minn. 291, 110 Am. St. Rep. 370, 102 N. W. 713, applying principle to application for tract under soldier's additional homestead certificate; Washington Rock Co. v. Young, 110 Am. St. Rep. 666, 29 Utah, 121, 80 Pac. 387, applying rule where entry made on faith of original survey and retracing changed lines.

21 How. 248-251, 16 L. 118, MAGUIRE v. CARD.

Syl. 1 (V, 841). Admiralty—Supplies furnished to domestic vessel.

Approved in The Sue, 137 Fed. 135, arguendo.

21 How. 287-290, 16 L. 36, FORD v. WILLIAMS.

Syl. 1 (V, 344). Principal's suit on contract in agent's name.

Approved in Dennis v. First Nat. Bank, 33 Wash. 165, 73 Pac. 1126, applying rule where client dealt with only one member of firm of attorneys.

Syl. 4 (V, 845). Principal may show agency by parol.

Approved in In re Weisenberg, 131 Fed. 521, parol evidence is admissible to show that joint notes signed by members of bankrupt partnership are in fact firm debts.

21 How. 305-322, 16 L. 125, BROWN v. HUGER.

Syl. 1 (V, 849). Removal of suit against government official.

Approved in Wadsworth v. Boysen, 148 Fed. 780, denying federal jurisdiction over suit to enjoin Indian agent from obstructing complainant in prospecting on Indian reservation.

Syl. 2 (V, 849). Boundaries—Calls for natural objects control.

Approved in Kleven v. Gunderson, 95 Minn. 254, 104 N. W. 7, following rule.

21 How. 322-331, 16 L. 165, KENDALL v. WINSOR.

Syl. 4 (V, 851). Equity protects inventor against piracy.

Distinguished in Jenner v. Bowen, 139 Fed. 563, where inventor made and set up machine for customer who paid for it and sold its product as intended, use was public; Eastman v. Mayor etc. of New

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York, 134 Fed. 852, 69 C. C. A. 628, where inventor of improvement in fire engine pumps had device placed on engine of which he was engineer and showed it to manufacturers, placing device by latter on other engines does not effect public use.

21 How. 343-356, 16 L. 100, McKINLAY v. MORRISH.

Syl. 1 (V, 852). Admiralty—Irrelevant evidence not part of case.

Approved in Barber v. Lockwood, 134 Fed. 986, applying principle in action to recover damages to barge caused by unsafe condition of wharf at which she was moored.

21 How. 356-366, 16 L. 130, UNITED STATES v. CITY BANK OF COLUMBUS.

Syl. 1 (V, 854). Bank cashier's acts bind bank.

Approved in Hier v. Miller, 68 Kan. 268, 75 Pac. 80, 63 L. R. A. 952, bank cashier cannot pay individual debts by entering their amount as credit on passbook of creditor who keeps account with bank; Bank v. Wetzel, 58 W. Va. 5, 50 S. E. 888, 7 L. R. A. (N. S.) 305, cashier of bank has no implied power to receive money for interest in advance on note owned by bank and agree to extend time of payment and thus discharge indorser.

Syl. 2 (V, 855). Scope of bank cashier's duties.

Approved in Commercial Nat. Bank v. First Nat. Bank, 97 Tex. 543, 80 S. W. 604, statement by president of national bank that note which was in fact forged was properly signed by purported signer does not bind bank.

Syl. 4 (V, 856). Validity of contracts by corporate officers.

Approved in Harrison Co. v. State Sav. Bank, 127 Iowa, 245, 103 N. W. 122, admissions of bank cashier as witness in action to which bank not party are inadmissible against bank in action against it.

21 How. 372-385, 16 L. 144, NEW YORK ETC. MILL S. S. CO. v. RUMBALL.

Syl. 3 (V, 858). Collision—Change of course by schooner in peril.

Approved in Brigham v. Luckenback, 140 Fed. 332, schooner sailing close-hauled and privileged over tug approaching on crossing course not in fault for collision though she keeps course.

21 How. 389-390, 16 L. 143, BALLANCE v. FORSYTH.

Syl. 1 (V, 862). Consent cannot give jurisdiction.

Approved in Clark v. Doerr, 143 Fed. 961, time within which writ of error must be sued out under Comp. St. 1901, p. 547, cannot be extended by agreement; Wedd v. Gates, 15 Okl. 606, 82 Pac. 809, agreement of parties in general appearance of defendant does not confer jurisdiction on supreme court over action to review district judgment commenced after expiration of statutory time.

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21 How. 390-391, 16 L. 81, MASON v. GAMBLE.

Syl. 1 (V, 862). Writ of error in revenue cases.

Approved in Thomas v. Lincoln County, 41 Wash. 152, 83 Pac. 19, recovery of judgment against county in suit to recover $64.56 taxes paid on alleged erroneous assessment of tract mistakingly assessed as containing more land than it in fact contained, is not suit involving legality of tax within statute permitting appeal to supreme court.

21 How. 414-426, 16 L. 154, WHITE WATER VALLEY CANAL CO. v. VALLETTE.

Syl. 1 (V, 865). Agreement for mortgage is binding.

Approved in Harrigan v. Gilchrist, 121 Wis. 361, 99 N. W. 981, imperfect attempt to make mortgage gives priority in creditors' suit.

Syl. 4 (V, 866). Corporation may sell property.

See notes, 111 Am. St. Rep. 328; 103 Am. St. Rep. 551.

21 How. 441-445, 16 L. 184, PEARCE v. MADISON ETC. R. R. CO.

Syl. 1 (V, 870). Railroad cannot run steamers.

Approved in State v. Canadian Pac. Ry. Co., 100 Me. 206, 60 Atl. 902, construing Pub. Laws 1901, c. 145, p. 160, relating mileage apportionment for purposes of taxing railroads; West etc. R. R. Co. v. Blue Ridge etc. Co., 102 Md. 329, 111 Am. St. Rep. 371, 62 Atl. 355, 3 L. R. A. (N. S.) 887, holding void contract whereby railroad guarantees payment of interest and dividends on bonds and stock of hotel company along its line.

Syl. 2 (V, 871). Corporation cannot vary from charter objects.

Approved in Anglo-American Land etc. Co. v. Lombard, 132 Fed. 742, 68 C. C. A. 89, under Missouri statutes trust company cannot purchase all stock of another corporation for purpose of controlling its management; In re S. P. Smith Lumber Co., 132 Fed. 622, corporation chartered for purpose of buying and selling building materials cannot bind itself as guarantor for performance of building contract by another; Sturdevant Bros. & Co. v. Farmers' etc. Bank, 69 Neb. 225, 95 N. W. 821, banking corporation not liable on replevin bond executed in its name by cashier; Hugenot Mills v. Jempson, 68 S. C. 366, 102 Am. St. Rep. 673, 47 S. E. 688, where corporation which formed partnership with individual contracted to sell defendant goods purchased in part with its funds, defendant in suit by corporation in own right and as assignee of partner for breach of contract cannot plead partnership as ultra vires. See 111 Am. St. Rep. 312, note.

Syl. 3 (V, 874). Corporations cannot consolidate without charter power.

Approved in Jones v. Missouri-Edison Electric Co., 135 Fed. 156, consolidation of corporations under Mo. Rev. St. 1899, § 1334, not invalidated by fact that one of corporations was itself created by prior consolidation.

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Syl. 4 (V, 874). Railroad's liability for ultra vires notes.

Approved in Anderson v. War Eagle etc. Min. Co., 8 Idaho, 803, 72 Pac. 674, applying rule. See 111 Am. St. Rep. 317, note.

21 How. 463-481, 16 L. 192, CONVERSE v. UNITED STATES.

Syl. 3 (V, 879). Compensation of officer acting for other district.

Approved in State v. Grant, 12 Wyo. 11, 73 Pac. 473, on death of governor during term of office Secretary of State is entitled to gubernatorial salary as well as his own, for acting as governor.

Distinguished in Finley v. Territory, 12 Okl. 644, 73 Pac. 280, probate judges cannot keep fees received for services as such judges.

21 How. 481-488, 16 L. 198, FENN v. HOLME.

Syl. 2 (V, 881). Proceedings at law and in equity.

Approved in Mutual Life Ins. Co. v. Blair, 130 Fed. 974, upholding suit by insurer to cancel life policy for fraud, where policy provided for settlement by issuance of annuity contract by terms of which widow was to receive payments for twenty years and if she died prior to that time her children to receive balance; Anthony v. Burrow, 129 Fed. 790, denying federal equity jurisdiction to restrain state officer from certifying nomination of candidate for Congress.

Syl. 3 (V, 881). Equity—Following state practice.

Approved in Illinois Life Ins. Co. v. Newman, 141 Fed. 453, denying federal jurisdiction to enjoin collection of state tax; In re E. T. Kenney Co., 136 Fed. 456, creditors of bankrupt, who before bankruptcy assigned claims to committee in trust to purchase and sell bankrupt's property for benefit of assignors, cannot prove their equitable interest as claims against bankrupt estate.

Syl. 4 (V, 882). No ejectment till patent issues.

Approved in Day v. Mountin, 137 Fed. 764, 70 C. C. A. 190, contract for sale of land requiring vendor to furnish abstract showing clear title cannot be specifically enforced by vendor where only title shown is government entry without final proofs; Surghenor v. Ranger, 133 Fed. 457, determining rights under conveyance by purchaser of concession of land under Mexican colonization law before selection of land.

21 How. 493-506, 16 L. 203, LEA v. POLK CO. COPPER CO.

Syl. 2 (V, 883). Bona fide purchaser from patentee protected.

Approved in United States v. Detroit Timber etc. Co., 131 Fed. 678, following rule.

Syl. 3 (V, 884). Adverse possession as notice.

See 104 Am. St. Rep. 345, note.

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Syl. 5 (V, 884). Evidence—Declarations by person since deceased.

Approved in Williams v. Miles, 68 Neb. 478, 110 Am. St. Rep. 445, 94 N. W. 711, applying rule to show that prior will was revoked by subsequent lost will.

21 How. 506-526, 16 L. 169, ABLEMAN v. BOOTH.

Syl. 9 (V, 890). Process not effective extraterritorially.

Approved in Kibbler v. St. Louis etc. R. Co., 147 Fed. 880, foreign corporation, which under state laws can be sued in state courts only in counties in which it does business, is not suable in federal court in state unless it does business in one of counties of district; In re Bailey, 10 Okl. 297, 61 Pac. 923, denying habeas corpus to warden of Kansas penitentiary.

21 How. 539-546, 16 L. 208, COMMISSIONERS OF KNOX CO. v. ASPINWALL.

Syl. 2 (V, 895). Recitals in municipal bonds.

Distinguished in Knight v. Shelton, 134 Fed. 438, fact that speaker of house of Arkansas legislature declaring constitutional amendment legally adopted on canvass of vote of electorate is not conclusive.

Syl. 3 (V, 897). County aid bonds—Conclusiveness of recitals.

Approved in Northwestern Sav. Bank v. Centreville Station, 143 Fed. 85, applying rule where town bonds recited issuance under Illinois statute authorizing towns to borrow money for highway improvements, and that supervisors and clerk were acting under authority of highway commissioners, pursuant to popular vote authorizing bonds; Marion Water Co. v. City of Marion, 121 Iowa, 322, 96 N. W. 888, where city, authorized to construct waterworks, adopted ordinance granting company right to lay mains in street, providing for hydrant rentals and giving company right to collect rents from consumers, and company constructed works, city cannot defeat hydrant rentals by showing ordinance irregularly drawn.

21 How. 548-572, 16 L. 211, CHAMBERLAIN v. WARD.

Syl. 10 (V, 909). Steamers must have vigilant lookouts.

Approved in The Sitka, 132 Fed. 864, holding steamer not having vigilant lookout liable for collision with tug and tow in channel of river; The Dauntless, 129 Fed. 722, 64 C. C. A. 243, holding steamer in fault for collision in river with two launches made fast together, where she had no proper lookout.

21 How. 575-578, 16 L. 221, WHITE v. VERMONT ETC. R. R. CO.

Syl. 2 (V, 913). Holder may fill in blank in bond.

Approved in Gamble v. Rural Ind. School Dist., 132 Fed. 521, municipal bonds are negotiable where name of payee and word "order" or "bearer" are left blank.

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21 How. 582-605, 16 L. 226, BARBER v. BARBER.

Syl. 1 (V, 944). Federal jurisdiction—Enforcement of alimony.

Modified in Israel v. Israel, 148 Fed. 580, decree for alimony and costs supports action in another in so far as it is for sum due at time of rendition and which is absolutely awarded but not with respect to future payments provided therein.

Distinguished in De La Rama v. De La Rama, 201 U. S. 307, 308, 50 L. 767, 26 Sup. Ct. 485, upholding appellate jurisdiction to review Philippine divorce decree awarding alimony and property in excess of jurisdictional amount.

Syl. 3 (V, 915). Establishment of new domicile by wife.

Approved in Haddock v. Haddock, 201 U. S. 571, 583, 50 L. 870, 875, 26 Sup. Ct. 525, mere domicile within state of one party to marriage does not give courts of that state jurisdiction to render divorce decree enforceable in other states against nonappearing, nonresident defendant served by publication; Toledo Traction Co. v. Cameron, 137 Fed. 56, 69 C. C. A. 28, where father and mother of infant plaintiff are divorced and his custody awarded to mother, her domicile and place of citizenship govern federal jurisdiction of action by infant. See 109 Am. St. Rep. 259, 267, note.

Syl. 4 (V, 916). Suit on foreign alimony decree.

Approved in Harding v. Harding, 198 U. S. 339, 49 L. 1076, 25 Sup. Ct. 679, decree in favor of wife in suit for separate maintenance under Illinois statute is conclusive on husband in California courts on issue whether same separation constitutes desertion on her part; Israel v. Israel, 130 Fed. 240, upholding federal jurisdiction over action on decree for weekly alimony as to amount due thereon at time of action; Wagner v. Wagner, 26 R. I. 27, 57 Atl. 1059, 65 L. R. A. 816, upholding action of debt based on decree for alimony rendered by court of another state. See 102 Am. St. Rep. 704, note.

Distinguished in Leyland v. Leyland, 186 Mass. 422, 71 N. E. 795, where wife of minor under guardianship has obtained decree of divorce and alimony prior to settlement of guardian's account on husband's attaining majority, she cannot appeal from settlement of account; dissenting opinion in Haddock v. Haddock, 201 U. S. 611, 50 L. 887, 26 Sup. Ct. 525, majority holding mere domicile within one state of one party to marriage does not give courts of that state jurisdiction to render divorce decree enforceable in other states against nonappearing nonresident defendant served by publication.

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XXII HOWARD.

22 How. 28-45, 16 L. 360, EMERSON v. SLATER.

Syl. 1 (V, 919). Changing written contract by parol agreement.

Approved in McConathy v. Lanham, 116 Ky. 740, 76 S. W. 536, parol agreement for extension of time for payment under written contract for sale of mineral rights is void; Taylor v. Finnigan, 189 Mass. 574, 76 N. E. 205, 2 L. R. A. (N. S.) 973, oral modification of lease, consisting of promise by landlord to provide additional means of egress from demised premises so as to make them comply with statute, is valid if founded on good consideration.

Syl. 2 (V, 919). Statute of frauds—Answering for other's debt.

Approved in Pratt v. Fishwild, 121 Iowa, 649, 96 N. W. 1092, following rule; Taylor v. Finnigan, 189 Mass. 575, 76 N. E. 205, 2 L. R. A. (N. S.) 973, oral modification of lease, consisting of promise by landlord to provide additional means of egress from demised premises so as to make them comply with statute, is valid if founded on good consideration; McCormick v. Johnson, 31 Mont. 270, 78 Pac. 502, promise by partners to pay existing debt of corporation to another in consideration of such other giving them agency for sale of his coal, need not be in writing; Chicago etc. R. Co. v. Brown, 70 Neb. 700, 97 N. W. 1040, uncertainty as to which of two persons, both denying liability, is liable for fixed debt, is sufficient consideration for compromise between one of parties and creditor.

22 How. 46-48, 16 L. 285, OVERTON v. CHEEK.

Syl. 1 (V, 920). Seal necessary to writ of error.

Distinguished in Kipp v. Burton, 29 Mont. 102, 101 Am. St. Rep. 544, 74 Pac. 87, 63 L. R. A. 325, under Act 1899, p. 145, § 2, sale under execution defective by reason of absence of seal was validated by act without amendment.

22 How. 48-56, 16 L. 269, NELSON v. LELAND.

Syl. 1 (V, 921). Supreme court—District court's jurisdiction.

Approved in Miltimore v. Hoffman, 125 Wis. 563, 104 N. W. 842, under Rev. St. 1898, § 3769, where appeal was properly perfected from justice's judgment, on which justice had no jurisdiction, it is duty of circuit court to dismiss action.

22 How 96-111, 16 L. 323, BANK OF PITTSBURG v. NEAL.

Syl. 1 (V, 825). Authority to fill blanks in note.

Approved in Mechanics' Bank v. Chardavoyne, 69 N. J. L. 259, 101 Am. St. Rep. 701, 55 Atl. 1081, following rule; Thread v. Guer-

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niger, 115 La. 246, 38 So. 981, where holder of note secured by mortgage left for safekeeping with notary who sold it and mortgaged property was sold by owner who deposited in court amount sufficient to pay note, purchaser from notary was entitled to judgment on note; Merchants' etc. Bank v. Ohio Valley etc. Co., 57 W. Va. 630, 50 S. E. 882, 70 L. R. A. 312, bank discounting note in hands of agent with knowledge of agency and with notice that agent was to use proceeds for personal use cannot recover of principal.

(V, 925.) Miscellaneous. Cited in Gilmore v. Mecker, 115 La. 866, 40 So. 244.

22 How. 129-132, 16 L. 294, ROACH v. CHAPMAN.

Syl. 1 (V, 928). Shipbuilding contract not maritime.

Approved in The Winnebago, 141 Fed. 949, fact that vessel subject to statutory lien for labor or materials under state statute has been enrolled and engaged in interstate commerce, does not affect jurisdiction of state court over suit to enforce statutory liens; Delaney etc. Co. v. The Winnebago, 142 Mich. 88, 105 N. W. 529, upholding Comp. Laws 1897, § 10,789, creating lien for materials furnished for original construction of ships and providing for enforcement of lien.

Syl. 2 (V, 930). Federal courts—State law giving lien.

Approved in The San Rafael, 141 Fed. 280, state statute limiting time within which liens on vessels given thereby must be enforced does not affect admiralty jurisdiction to enforce lien given by general maritime law.

22 How. 193-214, 16 L. 306, LYTLE v. ARKANSAS.

Syl. 3 (V, 934). Fraud—Review of land office decisions.

Approved in United States v. Detroit Timber etc. Co., 200 U. S. 339, 50 L. 506, 26 Sup. Ct. 282, bona fide holder of standing timber from holders of receiver's final receipts for land entered under timber act cannot on avoidance of patents for fraud of entryman, be required to account to government for timber cut in reliance on purchase; Estes v. Timmons, 199 U. S. 395, 50 L. 244, 26 Sup. Ct. 85 perjury on hearing before Land Department of contest over entry under homestead laws is not ground for equitable relief against department decision; Le Marchel v. Teegarden, 133 Fed. 827, party attacking patent for mistake of fact must plead and prove evidence before department from which mistake resulted, particular mistake made and the way in which it occurred.

Distinguished in Estes v. Timmons, 12 Okl. 543, 73 Pac. 305, refusing to review determination of land department and declare trust where only allegation touching fraud is that some of witnesses before department testified falsely.

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22 How. 214-216, 16 L. 238, BONDIES v. SHERWOOD.

Syl. 1 (V, 935). Salvage—Repudiation of contract.

Approved in The Myrtle Tunnel, 146 Fed. 326, tug contracting to float and deliver stranded ship at certain port, which fails to do so, cannot recover salvage for its efforts as result of which ship floated by tide and rescued by other vessels.

22 How. 217-225, 16 L. 240, CHAFFEE v. BOSTON BELTING CO.

Syl. 1 (V, 936). Repair of patented machine by purchaser.

Approved in National Cash Reg. Co. v. Grobet, 148 Fed. 387, where complainant sold two cash registers which were alike except that one contained printing device not attached to other, and defendant took off printing device and attached it to other, there was no infringement; Wagner Typewriter Co. v. Webster Co., 144 Fed. 410, 415, determining right to replace ribbon and spool for typewriters.

Distinguished in Morrin v. Robert etc. Works, 138 Fed. 73, holding reconstruction of generating tubes in steam generator to be infringement.

22 How. 227-244, 16 L. 243, SINNOT v. DAVENPORT.

Syl. 1 (V, 937). State navigation acts conflicting with federal.

Approved in Jacobson v. Massachusetts, 197 U. S. 25, 49 L. 649, 25 Sup. Ct. 358, upholding Mass. Rev. Laws, c. 75, § 137, authorizing compulsory vaccination; Dobbins v. Los Angeles, 195 U. S. 237, 49 L. 175, 25 Sup. Ct. 18, holding void city ordinance narrowing limits within which gasworks may be erected where it included works in process of erection under prior ordinance, where change in limits not demanded by public welfare; Northern Securities Co. v. United States, 193 U. S. 336, 348, 48 L. 700, 704, 24 Sup. Ct. 436, combination by stockholders in two competing interstate railroads to form stockholding corporation to acquire, in exchange for own stock controlling interest in stock of each road, violates anti-trust act of 1890; Crescent Liquor Co. v. Platt, 148 Fed. 898, holding Acts W. Va. 1903, p. 130, c. 40, prohibiting delivery of liquor by agent to unlicensed person void as applied to interstate shipments; Hagan v. City of Richmond, 104 Va. 732, 3 L. R. A. (N. S.) 1120, 52 S. E. 389, local authorities may keep navigable waters unobstructed, where war department does not remove obstructions. See 103 Am. St. Rep. 869, note.

22 How. 256-269, 16 L. 313, KIMBO v. BULLITT.

Syl. 2 (V, 940). Trading partnership's bill of exchange.

Approved in Marsh v. Wheeler. 77 Conn. 453, 454, 59 Atl. 411, firm engaged in making plumbing contracts and purchasing and selling fixtures, though it has no store, is trading partnership, partners of which may bind firm by note.

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Syl. 3 (V, 941). Accommodation acceptors of partnership paper for partner.

Approved in Union Nat. Bank v. Neill, 149 Fed. 714, 717, where note when presented for discount was signed on face by three persons, fact that name of partnership subsequently adjudged bankrupt appeared as second signer not notice that firm signed only as surety.

22 How. 270-273, 16 L. 337, CLARK v. BOWEN.

Syl. 1 (V, 941). Effect of annulment of compromise.

See 100 Am. St. Rep. 429, note.

22 How. 290-293, 16 L. 342, YTURBIDE'S EXECUTORS v. UNITED STATES.

Syl. 1 (V, 943). Notice of appeal mandatory.

Approved in Todd v. Peterson, 13 Wyo. 522, 81 Pac. 881, where motion for new trial was not filed with clerk within time required, by mere inadvertence, court could not at subsequent term direct filing of motion nunc pro tunc.

(V, 943.) Miscellaneous. Cited in Meyers v. United States, 5 Okl. 185, 48 Pac. 189, to point that land department may prescribe rules governing proceedings instituted to obtain title to public land.

22 How. 318-330, 16 L. 370, REFELD v. WOODFOLK.

Syl. 2 (V, 944). Conveyance and payment of price correlative.

Approved in Williams v. Neely, 134 Fed. 8, 69 L. R. A. 232, 67 C. C. A. 171, partial failure of consideration resulting from defect of title is good defense pro tanto to action by vendor on purchase money note where vendor covenanted against encumbrances.

Syl. 3 (V, 945). Agreement for warranty deed—Remedy.

Distinguished in Williams v. Neely, 134 Fed. 10, 69 L. R. A. 232, 67 C. C. A. 171, enjoining action at law on purchase money note where vendor covenanted against encumbrances and there was defect in title.

22 How. 330-334, 16 L. 249, WARD v. THOMPSON.

Syl. 1 (V, 945). Admiralty—Accounting for profits of vessel.

Cited in The Clifton, 143 Fed. 463, arguendo.

Distinguished in The Emma B., 140 Fed. 771, upholding admiralty jurisdiction to decree accounting as incidental to suit for partition of vessel.

Syl. 2 (V, 946). Who are partners.

Approved in Burton v. United States, 142 Fed. 62, where in execution of joint enterprise one partner deposits nonmailable circular in mail with knowledge of other, latter causes circular to be so deposited within meaning of Rev. St., § 3893; Rector v. Robins, 74 Ark. 442, 86 S. W. 669, holding erroneous instructions that if defendant agreed to

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perform services for firm and to receive one-third of profits, but to contribute nothing to firm, he was not partner.

22 How. 341-352, 16 L. 260, REY v. SIMPSON.

Syl. 1 (V, 946). Indorser before delivery.

Approved in Keyser v. Warfield, 100 Md. 80, 59 Atl. 190, and Keyser v. Warfield, 103 Md. 167, 63 Atl. 218, both holding where plaintiff and intestate, prior to delivery of note executed by corporation to bank for discount, and before name of payee had been written therein indorsed note, they became joint makers.

22 How. 352-364, 16 L. 345, JETER v. HEWITT.

Syl. 2 (V, 949). Following state law.

Approved in City of Defiance v. McGonigale, 150 Fed. 697, following state decision to effect that city by accepting performance and itself performing water contract for several years estopped to question its validity.

22 How. 364-380, 16 L. 296, ASPINWALL v. COMMISSIONERS OF DAVIESS COUNTY.

Syl. 1 (V, 949). Contracts—Railroad aid subscription.

Approved in Farmers' Loan etc. Co. v. Sioux Falls, 131 Fed. 912, under South Dakota constitution as amended in 1902, city could not issue water bonds on note taken before amendment under statute providing that majority of electors should be determined by vote for mayor at preceding city election.

22 How. 392-406, 16 L. 353, UNITED STATES v. TESCHMAKER.

Syl. 1 (V, 954). Mexican archives as evidence.

Approved in Sprinkle v. United States, 141 Fed. 820, admitting rules of Internal Revenue Department in prosecution for defrauding government of tax on distilled liquors.

22 How. 422-435, 16 L. 387, THOMPSON v. LESSEE OF CARROLL.

Syl. 1 (V, 956). Tax sale of lands—Exhaustion of personalty.

Approved in Hadley v. Hadley, 114 Tenn. 171, 87 S. W. 254, upholding Acts 1897, c. 1, p. 5, as enacted in 1899, 1901, 1903, under which lien for taxes assessed to life tenant attaches to interest of remainderman.

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XXIII HOWARD.

23 How. 14-28, 16 L. 474, LAWRENCE v. TUCKER.

Syl. 14 (V, 962). Parol to explain mortgage.

Approved in Holley v. Curry, 58 W. Va. 75, 112 Am. St. Rep. 948, 51 S. E. 137, equitable mortgage containing clause that it is to secure to person named payment of whatever sum may be due on settlement, sufficiently describes debt.

23 How. 28-45, 16 L. 412, RICHARDSON v. GODDARD.

Syl. 2 (V, 964). Shipping—Delivery to consignee.

Approved in Vaughn v. New York etc. R. R. Co., 27 R. I. 237, 61 Atl. 696, where carrier permits consignee to open cars after they are on spur track and remove part of contents and put own locks on cars, carrier's liability is terminated. See 97 Am. St. Rep. 99, note.

23 How. 49-65, 16 L. 534, OELRICH v. FORD.

Syl. 2 (V, 966). Custom to vary written contract.

Approved in Moore v. United States, 196 U. S. 166, 49 L. 433, 25 Sup. Ct. 202, custom between shippers and ship owners at San Francisco requiring consignee to designate berth for discharge of cargo does not prevail over contract for delivery at wharf in Honolulu; Knitting Mills v. Guaranty Co., 137 N. C. 570, 50 S. E. 306, 70 L. R. A. 167, indemnity bond cannot be modified by extrinsic evidence of preliminary negotiations.

Syl. 3 (V, 967). When parol admissible to explain writing.

Approved in Lillard v. Kentucky Distilleries etc. Co., 134 Fed. 182, 67 C. C. A. 74, applying rule to evidence of usage in reference to feeding cattle with distillery slop; Kalamazoo Corset Co. v. Simon, 129 Fed. 145, 146, usage that in sales of job lots of goods, buyer is not obligated if variation in quantity delivered is considerable, not applicable where contract recited that proportion in sizes was nearly perfect.

Syl. 5 (V, 967). Principal's suit on agent's contract.

Approved in In re Weisenberg, 131 Fed. 521, parol evidence is admissible to show that joint notes signed by members of bankrupt firm are in fact firm debts.

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23 How. 66-90, 16 L. 500, DUBUQUE AND PACIFIC R. R. CO. v. LITCHFIELD.

Syl. 3 (V, 969). Public grants construed against grantee.

Approved in Knoxville Water Co. v. Knoxville, 200 U. S. 35, 50 L. 359, 26 Sup. Ct. 224, municipal grant of waterworks franchise does not devest municipality of power to construct its own system; Story v. Woolverton, 31 Mont. 354, 355, 78 Pac. 590, construing 26 Stat. 748, granting to Montana section of land of former military reservation with reference to water rights.

23 How. 90-108, 16 L. 419, GREEN'S ADMINISTRATRIX v. CREIGHTON.

Syl. 2 (V, 971). Equity jurisdiction over executors as trustee.

Approved in Schurmeier v. Connecticut etc. Ins. Co., 137 Fed. 47, 69 C. C. A. 22, upholding federal jurisdiction over equity suit to permit presentation of and allow claim against estate of decedent after time limited by order of Minnesota court and within eighteen months provided by statute; dissenting opinion in Moore v. Fidelity Trust Co., 138 Fed. 1009, majority holding where surviving partner was one of executors of estate of deceased partner, which was being administered upon, bill by distributee under will to compel accounting by surviving partner not maintainable in federal court.

Syl. 3 (V, 972). Insolvency court's jurisdiction, when exclusive.

Distinguished in United States v. Bitter Root Development Co., 200 U. S. 475, 50 L. 562, 26 Sup. Ct. 318, denying equitable relief for wrongful conversion of timber from public domain where one of defendants is executrix of principal wrongdoer whose estate is insolvent.

Syl. 4 (V, 973). Discovery of assets of insolvent surety for executor.

Approved in Fincke v. Bundrick, 72 Kan. 187, 83 Pac. 405, sale of testator's realty to surety on executor's bond under probate order procured through executor's fraud set aside at suit of devisee though surety innocent.

23 How. 117-132, 16 L. 436, PENNOCK v. COE.

Syl. 1 (V, 973). Mortgage of after-acquired property valid.

Approved in Fisher v. Zollinger, 149 Fed. 57, taking possession of after-acquired property by mortgagee within four months of mortgagor's bankruptcy does not create lien nor operate as preferential transfer within Bankr. Act, 1898, § 60a; Johnson v. Donohue, 113 Tenn. 450, 83 S. W. 361, where insolvent prior to bankruptcy assigned right to receive certain funds from railroad accruing under contract together with after-accruing funds, in consideration of pre-existing debt, assignee entitled to accruing funds, though at time of assignment debtor's right thereto was contingent. See 99 Am. St. Rep. 253, 259, note.

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23 How. 149-167, 16 L. 518, BENJAMIN v. HILLARD.

Syl. 3 (V, 978). Change of contract discharging surety.

Approved in Groendyke v. Musgrave, 123 Iowa, 539, 99 N. W. 14 where defendant guaranteed payment under contract whereby plai tiff sold twine for which notes given payable in October and Novembe and part of twine being inferior was returned and credit given ther for, guarantor not relieved; Segari v. Mazzei, 116 La. 1031, 41 So. 24 mere change in site of dwelling-house from one place to another same square does not discharge surety.

Syl. 5 (V, 979). Damages for deficiency in machinery.

Approved in American China Dev. Co. v. Boyd, 148 Fed. 271, allo ing prospective damages consisting of unpaid contract price for di charge of servant before expiration of term; Thomas China Co. C. W. Raymond Co., 135 Fed. 28, 67 C. C. A. 629, under contra for sale of machinery whereby seller agreed to replace parts breakin through defects, buyer could remedy defects or procure new parts fro others and charge seller with cost under general warranty.

23 How. 167-170, 16 L. 410, OGDEN v. PARSONS.

Syl. 1 (V, 979). Subjects of expert evidence.

Approved in Hamann v. Milwaukee Bridge Co., 127 Wis. 565, 1 N. W. 1086, opinion evidence as to whether particular manner moving heavy machine from car to building was proper, is incompeten

23 How. 172-190, 16 L. 424, CASTLE v. BULLARD.

Syl. 1 (V, 979). Peremptory nonsuit by circuit court.

Distinguished in Parks v. Southern Ry. Co., 143 Fed. 278, and Hun v. McNamee, 141 Fed. 294, both holding where voluntary nonsuit pe mitted by state practice, it is discretionary with federal court to r fuse nonsuit after conclusion of plaintiff's testimony and after d recting verdict for defendant.

Syl. 3 (V, 980). Evidence of other similar fraudulent acts.

Approved in Exchange Bank v. Moss, 149 Fed. 344, where conspira to defraud covered long period of time, evidence of acts of defendant cashier as to similar transactions tending to show defendant's con plicity is admissible; Brooks v. United States, 146 Fed. 231, prosecution for using mails to defraud letters other than those in i dictment purported to be by defendant's company are admissible Olson v. United States, 133 Fed. 854, 67 C. C. A. 21, under indic ment to swindle government out of land by means of illegal entr evidence of other similar entries is admissible.

Syl. 5 (V, 981). Circumstantial evidence never irrelevant.

Approved in Bryan v. United States, 133 Fed. 500, 66 C. C. A. 36 in prosecution for uttering counterfeit five-cent pieces, where it

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shown that defendant passed such pieces, evidence of finding of mold for making twenty-five-cent pieces in his possession is admissible.

Syl. 6 (V, 982). Liability of partners for firm's fraud.

Approved in In re Hardie, 143 Fed. 608, materially false statement in writing made by partner in course of buying goods for purpose of obtaining credit, debars other partner from discharge in bankruptcy.

23 How. 190-209, 16 L. 484, BEAUBIEN v. BEAUBIEN.

Syl. 4 (V, 983). Time of discovery of fraud must be alleged.

Approved in Succession of Dauphin (Choppin v. Dauphin), 112 La. 140, 36 So. 300, mere general statement that discovery of fraud made within year is insufficient to annul judgment.

23 How. 209-220, 16 L. 433, PHILADELPHIA ETC. R. R. v. PHILADELPHIA ETC. TOWBOAT CO.

Syl. 1 (V, 984). Admiralty jurisdiction in tort.

Approved in United States v. Evans, 195 U. S. 365, 49 L. 237, 25 Sup. Ct. 46, upholding admiralty jurisdiction over libel in rem against vessel for colliding with beacon standing in water though built on piles driven into bottom; Bowers Hyd. Dredging Co. v. Federal Contracting Co., 148 Fed. 294, upholding admiralty jurisdiction over suit to recover hire of dredge intended to operate afloat, though dredge temporarily used for a partly land transaction.

(V, 984.) Miscellaneous. Cited in The Cumberland, 135 Fed. 236.

23 How. 220-235, 16 L. 442, DERMOLT v. JONES.

Syl. 2 (V, 987). Contracts—Dependent promises.

Cited in Schaffer Piano Mfg. Co. v. National Fire Ext. Co., 148 Fed. 165, arguendo.

Syl. 4 (V, 987). Assumpsit—Acceptance—Noncomformity with contract.

Approved in United States v. Molloy, 144 Fed. 323, where plaintiff's delivery of stone was not in accordance with contract but defendant accepted it with knowledge, plaintiff could recover value of stone delivered less loss sustained by breach of contract; Clough v. Stillwell Meat Co., 112 Mo. App. 189, 190, 86 S. W. 584, where warehouseman agreed to store goods till certain date and prior to such time goods burned, warehouseman could recover value of his services.

Distinguished in Tussey v. Owen, 139 N. C. 461, 52 S. E. 129, where child contracted to serve father till his death in consideration of his willing her quarter of property, gives no right to pay for her part performance.

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23 How. 287-309, 16 L. 562, HANEY v. BALTIMORE S. PACKET CO.

Syl. 1 (V, 990). Collision—Change of course.

Approved in The Job H. Jackson, 144 Fed. 898, holding steam solely in fault for collision with schooner where she saw schooner tw miles away; The Eagle Wing, 135 Fed. 832, collision at night betwe two schooners held to be due to fault of privileged vessel in changi course; The Dauntless, 129 Fed. 721, 64 C. C. A. 243, in suit to recov for death of person on launch sunk in collision with steamer whe only persons on launch were drowned, court may disbelieve unco tradicted testimony of pilot, though uncontradicted as to launch chan ing course.

Syl. 4 (V, 991). Collision—Necessity for lookout.

Approved in Brigham v. Luckenbach, 140 Fed. 326, following rul The Dauntless, 129 Fed. 722, 64 C. C. A. 243, holding steamer liab for collision with launch where proper lookout not kept.

23 How. 326-341, 16 L. 552, UNITED STATES v. GOMEZ.

Syl. 2 (V, 993). Appeal—Dismissal for failure to file record.

Approved in Sullivan v. Gage, 145 Cal. 771, 79 Pac. 542, applyi rule to dismissal of appeal from order allowing attorney's fees receiver in suit by state to wind up corporation.

23 How. 353-368, 16 L. 539, ADAMS v. NORRIS.

Syl. 2 (V, 994). Wills—Attestation of foreign will.

Approved in Keely v. Moore, 196 U. S. 43, 49 L. 379, 25 Sup. C 169, unofficial certificate of vice-consul appearing at foot of will e ecuted abroad, if otherwise sufficient as attestation, treated as su and designation of consul disregarded.

23 How. 381-401, 16 L. 488, ZABRISKIE v. CLEVELAND ETC. R.

Syl. 1 (V, 995). Estoppel of corporation guarantor of bonds.

See 105 Am. St. Rep. 508, note.

23 How. 401-412, 16 L. 524, ORIENTAL MUT. INS. CO. v. WRIGH

Syl. 1 (V, 1001). Insurance—Open policy—Additional premiu

Approved in Whitman v. Milwaukee Fire Ins. Co., 128 Wis. 131, L. R. A. (N. S.) 407, 107 N. W. 293, oral contract of insurance valid.

23 How. 420-433, 16 L. 510, BLIVEN v. NEW ENGLAND SCRE CO.

Syl. 2 (V, 1002). Custom to vary written contract.

Approved in Lillard v. Kentucky Distilleries Co., 134 Fed. 174, 6 C. C. A. 74, applying rule in construing contract to sell distillery slo deliverable at certain cattle-feeding lot.

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23 How. 435-438, 16 L. 574, MINTURN v. LARUE.

Syl. 2 (V, 1007). Public grants construed in public's favor.

Approved in Water etc. Co. v. City of Hutchinson, 144 Fed. 263, under Kansas constitution, city of second class cannot grant exclusive right for terms, to company to use streets for supplying water, gas or electricity; Commissioners of Cambridge v. Cambridge Water Co., 99 Md. 504, 58 Atl. 443, under Cambridge charter ordinance requiring water companies to pay fee for each plug and imposing penalty for failure to comply therewith is void; State v. Butler, 178 Mo. 313, 77 S. W. 570, under St. Louis charter ordinance placing power in board of health to contract for removal and disposal of city garbage is void. See 101 Am. St. Rep. 167, ante.

23 How. 457-464, 16 L. 584, DOE v. WILSON.

Syl. 1 (V, 1010). Indian treaty—Title of reservees.

Approved in Conway v. United States, 149 Fed. 267, where, under 25 Stat. 892, Ponca girl was allotted land and prior to selection she married Indian to whom other land allotted, and thereafter they made separate applications in lieu thereof, where by mistake all land patented to husband, she was entitled to half.

Distinguished in Wallace v. Adams, 143 Fed. 722, claimants of citizenship securing judgments in their favor, which were final under 29 Stats. 339, 340, and 30 Stat. 591, when rendered, and took possession of and demanded lands as allotments, before judgments made reviewable, acquired no vested rights against subsequent legislation enacted prior to allotment.

23 How. 505-515, 16 L. 556, STATE OF ALABAMA v. STATE OF GEORGIA.

Syl. 1 (V, 1017). River as boundary.

Approved in Peoria v. Central Nat. Bank, 224 Ill. 54, 79 N. E. 299, water's edge and not surveyed meander line is shore line from which lines should be drawn to show accretion rights of riparian owners; Dodge Co. v. Saunders Co., 70 Neb. 446, 97 N. W. 619, construing Comp. St. 1901, c. 78, § 87, referring to "streams which divide counties."

23 How. 515-543, 16 L. 545, LUCO v. UNITED STATES.

Syl. 1 (V, 1017). Photographic copies of records as evidence.

Cited in State v. Matheson, 130 Iowa, 444, 103 N. W. 139, admitting X-ray photograph in prosecution for homicide to show position of bullet.

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XXIV HOWARD.

24 How. 41-65, 16 L. 604, JONES v. SOULARD.

Syl. 1 (VI, 9). Stream as boundary—Accretions.

Approved in Franzini v. Layland, 120 Wis. 81, 97 N. W. 502, where river separates two states riparian owner owns unsurveyed island in stream on his side of boundary line.

24 How. 66-110, 16 L. 717, KENTUCKY v. DENNISON.

Syl. 2 (VI, 11). Service of process against state.

Approved in Henry v. State, 87 Miss. 34, 39 So. 863, governor cannot sue in name of state.

Distinguished in dissenting opinion in Henry v. State, 27 Miss. 92, 94, 97, 39 So. 883, 884, 885, majority holding governor cannot sue in name of state.

Syl. 3 (VI, 11). Mandamus not prerogative writ.

Approved in West Virginia etc. R. R. Co. v. United States, 134 Fed. 203, 67 C. C. A. 220, permitting amendment of alternative writ of mandamus to conform to findings; Mystic Milling Co. v. Chicago etc. Ry. Co., 132 Fed. 291, circuit court has no jurisdiction of action for mandamus which is not necessary for exercise of jurisdiction otherwise previously acquired; Woodworth v. Old Second Nat. Bank, 144 Mich. 339, 107 N. W. 905, mandamus proceedings are "civil actions" within statute relating to change of venue; In re Epley, 10 Okl. 644, 64 Pac. 21, where grant of peremptory mandamus is appealed from, supersedeas may be granted, and lower court cannot then punish disobedience to mandamus as contempt; Rider v. Brown, 1 Okl. 247, 32 Pac. 342, mandamus may issue in name of party interested. See 105 Am. St. Rep. 122, note.

Syl. 7 (VI, 13). Extradition—Crimes included.

Approved in Knox v. State, 164 Ind. 234, 108 Am. St. Rep. 297, 73 N. E. 258, fugitive extradited for specific crime may be tried for different crime without being afforded opportunity to return to asylum state. See 112 Am. St. Rep. 129, note.

Syl. 7 (VI, 14). Extradition prior to formation of union.

Approved in Barriere v. State, 142 Ala. 77, 39 So. 57, where application for discharge on habeas corpus from arrest in extradition proceedings is denied, petitioner may appeal to supreme court.

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Syl. 8 (VI, 14). Extradition—Executive demand—Complaint.

Approved in State v. White, 40 Wash. 565, 82 Pac. 909, 2 L. R. A. (N. S.) 563, under 2 Bal. Codes, § 7017, complaint must show accused legally charged with crime in demanding state.

Syl. 11 (VI, 15). Extradition—Sufficiency of indictment· judicial question.

Approved in In re Renshaw, 18 S. D. 37, 99 N. W. 84, following rule. See 112 Am. St. Rep. 132, note.

Syl. 12 (VI, 15). Extradition act not mandatory.

See 112 Am. St. Rep. 110, note.

Syl. 13 (VI, 16). Congressional authorization of state officer.

See 112 Am. St. Rep. 106, note.

24 How. 110-125, 16 L. 591, STURGIS v. BOYER.

Syl. 2 (VI, 17). Collision—Tow in charge of tug.

Approved in In re Walsh, 136 Fed. 558, 559, 69 C. C. A. 267, affirming The Echo, 131 Fed. 623, holding where tug is towing two barges, one of which is alongside and has own crew and pilot employed by owners of barges is on first barge, tug not liable for collision between first barge and steamer caused by failure of barges to carry lights; The W. G. Mason, 142 Fed. 918, where two tugs belonging to same owner were towing steamer, master of leader controlling ship's movements, but not those of rear tug, latter not liable in rem for stranding of two through fault of leading tug.

Distinguished in The Degama, 150 Fed. 324, moving vessel colliding with moored vessel is liable though she is handled by tugs which control her movements, where such defense not pleaded nor proved.

Syl. 3 (VI, 18). Collision—Tow in exclusive charge of tug.

Approved in Monongahela River etc. Co. v. O'Neil, 144 Fed. 79, holding tug towing dredge liable for capsizing of latter through want of care and excessive speed of former in rough weather; The Violetta, 141 Fed. 692, barge in tow of tug not liable with tug for collision where it was not chargeable with negligence; The De Gama, 140 Fed. 755, towed vessel not liable for collision unless negligence shown on part of tow and navigation of both tug and tow was under direction of tow's crew.

24 How. 169-175, 16 L. 644, ALMY v. STATE OF CALIFORNIA.

Syl. 1 (VI, 24). Duty on bill of lading as duty on exports.

Approved in Mosely v. State, 115 Tenn. 57, 86 S. W. 716, interest on government bonds is not taxable immediately on being paid into hands of bondholder.

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24 How. 188-195, 16 L. 625, RICHARDSON v. CITY OF BOSTON.

Syl. 2 (VI, 29). City—Power below low-water mark.

Distinguished in Georgetown v. Commonwealth, 115 Ky. 390, 73 W. 1013, 61 L. R. A. 673, city not liable for indictment for permittin nuisance, to which it had not contributed, to continue on private pro erty.

Syl. 5 (VI, 29). Evidence of former judgment founded on error.

Approved in Board of County Commrs. v. Cross, 12 N. M. 77, 73 Pa 616, where in former case demurrer sustained in determination of whic material issues of suit had to be passed on, and dismissal entered therei dismissal is res adjudicata.

24 How. 195-207, 16 L. 628, NATIONS v. JOHNSON.

Syl. 1 (VI, 30). Judgment as res adjudicata.

See 103 Am. St. Rep. 312, note.

Syl. 4 (VI, 31). Notice is essential to jurisdiction.

Approved in Clapp v. Houg, 12 N. D. 606, 102 Am. St. Rep. 589, 9 N. W. 712, 65 L. R. A. 757, holding void Rev. Codes 1899, § 6325, sub 2, providing for appointment of special administrator where death c person not satisfactorily proved, but he has disappeared.

Syl. 5 (VI, 31). Service by publication—Absence from state.

Approved in White v. White, 65 N. J. Eq. 747, 55 Atl. 741, upholdin service outside of state of notice for increase of allowance for maint nance of children of divorced parents.

Syl. 8 (VI, 32). Writ of error not new action.

Approved in Bradford v. Southern Ry. Co., 195 U. S. 248, 49 L. 18 25 Sup. Ct. 55, writ of error from circuit court of appeals without gi ing security for costs not allowed; Bristol v. United States, 129 Fe 89, 63 C. C. A. 529, defendant in criminal case cannot prosecute wr of error out of circuit court of appeals in forma pauperis; dissentin opinion in Ritchey v. Seeley, 68 Neb. 136, 97 N. W. 820, majority hol ing where A obtained judgment in district court and after his deat petition in error filed and A's attorney below filed waiver of summo and voluntary appearance, appellate court acquired no jurisdiction.

24 How. 233-242, 16 L. 648, THOMPSON v. ROBERTS.

Syl. 1 (VI, 35). Judgment as bar in subsequent suit.

Approved in Territory v. Hopkins, 9 Okl. 150, 59 Pac. 981, applyin rule to decision upholding issuance and validity of county fundin bonds.

Syl. 3 (VI, 35). Judgment as bar though others included.

Approved in In re Butrick, 185 Mass. 114, 69 N. E. 1048, form judgment concerning title in action in which one of petitioners had n been party, is conclusive in partition, in favor of other petitioners onl

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24 How. 257-264, 16 L. 635, GUE v. TIDE WATER CANAL CO.

Syl. 1 (VI, 38). Seizure of franchise on execution.

Approved in Stockton Gas etc. Co. v. San Joaquin Co., 148 Cal. 320, 83 Pac. 57, franchise to lay pipes or erect poles and supply city with light is assessable only in county in which city is located; Dobbins v. Colorado etc. Ry. Co., 19 Colo. App. 261, 75 Pac. 157, where railroad runs through two counties one county cannot sell part in that county to enforce payment of taxes; New York Cement Co. v. Consolidated etc. Cement Co., 178 N. Y. 177, 70 N. E. 454, where corporation, authorized to sell or discontinue its canal, sold canal to another who conveyed part of it to another, and rest of canal abandoned, part used is public highway. See 103 Am. St. Rep. 555, note.

24 How. 278-284, 16 L. 637, FROST v. FROSTBURG COAL CO.

Syl. 3 (VI, 43). Irregularities in incorporation—Estoppel of contractor.

Approved in Murphy v. Wheatley, 102 Md. 507, 508, 63 Atl. 64, 65, under act of 1900 imposing franchise tax on corporations, where trust company did not actually organize within two years of granting of charter, but no franchise tax assessed against it, failure to pay same did not ipso facto terminate corporate existence; Lusk v. Riggs, 70 Neb. 721, 102 N. W. 89, denying right to collaterally attack existence of de facto corporation.

24 How. 300-303, 16 L. 602, RECTOR ETC. OF CHRIST CHURCH v. COUNTY OF PHILADELPHIA.

Syl. 1 (VI, 49). Repeal of tax exemptions.

Approved in Powers v. Detroit etc. Ry. Co., 201 U. S. 557, 50 L. 865, 26 Sup. Ct. 556, Mich. Laws 1855, p. 305, § 9, providing for annual payment by railway of percentage of capital stock in lieu of other taxes created contract; Prewitt v. Security etc. Ins. Co., 119 Ky. 328, 83 S. W. 613, upholding Ky. St. 1903, § 631, providing for forfeiture of license to do business in state by foreign insurance company removing suit to federal court; Baltimore etc. Ry. Co. v. Wicomico Co., 103 Md. 289, 63 Atl. 682, under Code 1888, §§ 187, 188, providing that foreclosure purchaser of railroad may organize corporation which shall have all privileges of old company, such corporation not entitled to tax immunity enjoyed by mortgagor; Rochester v. Rochester Ry. Co., 182 N. Y. 116, 74 N. E. 958, 70 L. R. A. 773, Laws 1869, p. 54, c. 34, granting immunity from contribution for new pavements to street railroad was revocable at pleasure of legislature.

24 How. 307-314, 16 L. 699, UNION S. S. CO. v. NEW YORK & VA. S. S. CO.

Syl. 3 (VI, 52). Collision—Inevitable accident defined.

Approved in Bleakley v. New York, 139 Fed. 808, charter of scow is liable for its loss by being crushed by floating ice where it was left on

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dangerous side of pier; The Drum Craig, 133 Fed. 804, breaking of ship from moorings at dock during storm and her collision with another moored vessel not due to inevitable accident, where master had warning of storm; The Surf, 132 Fed. 881, yacht proceeding through Hell Gate so near shore that she was compelled to sheer out in order to pass other vessels when bow was caught by tide and she collided with tug proceeding on course pursuant to signal, is liable for injuries.

24 How. 315-317, 16 L. 689, MARTIN v. THOMAS.

Syl. 1 (VI, 53). Surety's liability not impliedly extended.

Approved in Stern v. Sawyer, 78 Vt. 12, 112 Am. St. Rep. 894, 61 Atl. 38, where, pending term of lease, lessor sold portion of property with consent of lessee, but without consent of latter's sureties, latter were discharged.

24 How. 333-346, 16 L. 650, WASHINGTON R. & G. PACKETT CO. v. SICKLES.

Syl. 2 (VI, 55). Requisites of res adjudicata.

Approved in Georgia R. etc. Co. v. Wright, 132 Fed. 917, where Georgia supreme court decided in suit between state and corporation that charter precluded imposition of tax in excess of one-half of one per cent of earnings, state is concluded in subsequent suit for taxes for different year under another statute.

Syl. 3 (VI, 56). Conclusiveness of former judgment.

Approved in Territory v. Hopkins, 9 Okl. 150, 59 Pac. 981, judgment upholding validity of county bonds is conclusive of question.

Syl. 4 (VI, 56). Res adjudicata—Extrinsic evidence.

Approved in Fayerweather v. Ritch, 195 U. S. 306, 49 L. 213, 25 Sup. Ct. 58, effect as res adjudicata of decree in case in which validity of releases put in issue by pleadings not limited by testimony of trial judge that validity of releases not considered; Halford v. James, 136 Fed. 555, 556, 69 C. C. A. 263, establishing issues of former case by parol on plea of res adjudicata where pleadings burned; Inglehart v. Lull, 69 Neb. 178, 95 N. W. 27, applying rule to show nature of case tried before justice of peace upon motion directed against alleged change of issues on appeal.

24 How. 352-357, 16 L. 712, DAY v. WASHBURN.

Syl. 2 (VI, 60). Creditor's suit—Necessity for judgment.

Approved in Wyman v. Wallace, 201 U. S. 242, 50 L. 741, 26 Sup. Ct. 495, affirming George v. Wallace, 135 Fed. 292, 68 C. C. A. 40, holding no judgment at law on note given by national bank necessary to suit by holder to subject property conveyed to trustee as security to satisfaction of debt.

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24 How. 376-385, 16 L. 735, BOARD OF COMMISSIONERS OF KNOX CO. v. ASPINWALL.

Syl. 1 (VI, 63). Nature of mandamus.

Approved in Territory v. Crum, 13 Okl. 11, 73 Pac. 297, refusing mandamus to compel probate judge to account for all fees in entering townsites and pay over all such fees received in excess of annual salary; Wilson v. Cox, 73 S. C. 400, 53 S. E. 613, mandamus does not lie to compel dispenser of county to open and operate dispensary, where, in order to do so, court would have to set aside election against dispensary; State v. Washington Irr. Co., 41 Wash. 286, 111 Am. St. Rep. 1021, 83 Pac. 310, mandamus does not lie to compel irrigation company to comply with contract to furnish water.

Syl. 2 (VI, 64). Mandamus to compel assessment for bonds.

Approved in Theis v. Commrs. of Washita County, 9 Okl. 653, 60 Pac. 508, mandamus and not action for money judgment lies where county commissioners have issued bridge warrants under statutory authority and have failed to levy annual tax to pay warrants.

24 How. 386-394, 16 L. 599, BULKLEY v. NAUMKEAG STEAM ETC. CO.

Syl. 1 (VI, 66). Contract of affreightment—Delivery to lighter.

Approved in Guffey v. Alaska etc. S. S. Co., 130 Fed. 274, 64 C. C. A. 517, where at time goods delivered on wharf under bill of lading reciting that goods were to be shipped on board ship lying at certain dock, complainant knew vessel was at sea, and goods not delivered to master, vessel not subject to lien for breach of contract of affreightment; Chesapeake etc. Towing Co. v. Western Assurance Co., 99 Md. 443, 50 Atl. 17, finding, in suit by assignee of owner of cargo of goods against steamer and owner of scow carrying goods to steamer, that scow unseaworthy, does not estop owner of scow in action against insurer of cargo.

Syl. 2 (VI, 66). Bill of lading—Necessity for delivery of goods.

See 105 Am. St. Rep. 350, note.

24 How. 398-407, 16 L. 714, LESSEE OF SMITH v. McCANN.

Syl. 4 (VI, 68). Ejectment—Title in stranger as defense.

Approved in McGuire v. Blount, 199 U. S. 144, 50 L. 128, 26 Sup. Ct. 1, applying rule where defendant set up ancient documents showing probate of will in proceedings during Spanish control of Florida and judicial sale of testator's lands.

24 How. 407-413, 16 L. 696, ADLER v. FENTON.

Syl. 5 (VI, 70). Fraudulent conveyance—Simple contract creditor.

Approved in Bitzer v. Washburn, 121 Iowa, 466, 96 N. W. 980, conspiracy to defeat collection of judgment by lawful means is not actionable; Flournoy v. Bullock, 11 N. M. 104, 66 Pac. 550, 55 L. R. A. 745, where receiver appointed for partnership, simple creditor having no

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lien cannot intervene in suit; Rothchild v. Trewella, 36 Wash. 682, 104 Am. St. Rep. 973, 79 Pac. 481, 68 L. R. A. 281, simple contract creditor cannot sue at law purchaser of stock of goods in bulk who has not complied with Laws 1901, p. 222, c. 109, to recover on seller's debt due him; Fryer v. Miley, 54 W. Va. 330, 46 S. E. 136, holding suit to set aside fraudulent conveyance under Code 1899, c. 133, § 2, by creditor at large before his debt due, cannot be sustained.

24 How. 426-427, 16 L. 742, TRACY v. HOLCOMBE.

Syl. 1 (VI, 73). Supreme court—New trial—Final judgment.

Approved in Clement v. Wilson, 135 Fed. 750, 68 C. C. A. 387, applying rule to order of federal court setting aside verdict and directing new trial.

24 How. 427-435, 16 L. 742, SUYDAM v. WILLIAMSON.

Syl. 1 (VI, 73). Following state decisions as to realty.

Approved in Southern Pac. Co. v. Western Pac. Ry. Co., 144 Fed. 179, applying rule in determining title to Oakland waterfront; Succession of Hasling, 114 La. 296, 38 So. 174, validity of will made in Louisiana by citizen thereof devising land in Mississippi, is governed by law of latter state; Bramblet v. Davis, 141 Fed. 784, and dissenting opinion in Metcalfe v. Union Trust Co., 181 N. Y. 54, 73 N. E. 503, both arguendo.

Distinguished in Davis v. Commonwealth Land etc. Co., 141 Fed. 716, where pending federal suit to quiet title by owners of tract under state patent which involved question of boundary, state decree in replevin decided boundary question in action to which land owners not parties, state decision not binding on federal court.

24 How. 450-461, 16 L. 749, FREEMAN v. HOWE.

Syl. 1 (VI, 75). Conflicting jurisdiction—Priority by seizure of res.

Approved in Fountain v. 624 Pieces of Timber, 140 Fed. 381, where deputy sheriff having attachment went in boat and had raft pointed out to him but did not assume possession, subsequent seizure under admiralty process was valid; In re Porterfield, 138 Fed. 197, where trust deed executed by bankrupt to wife more than four months prior to bankruptcy but less than four months prior to state suit, and property sold in bankruptcy free of liens, creditors could distribute fraud according to state law making preferences void; Security Trust Co. v. Union Trust Co., 134 Fed. 302, where state court on foreclosure of railroad mortgage has appointed receiver and ordered sale, federal court has no jurisdiction to enforce lien on property; Beardslee v. Ingraham, 183 N. Y. 418, 76 N. E. 477, where federal court attachment issued against property of corporation and writ filed with clerk of district where property situated, and thereafter receiver appointed by state court in suit to dissolve corporation, state court could not enjoin marshal from selling property on execution; Burnham etc. Co. v. Dickson, 5 Okl. 117, 47 Pac. 1061, where attachment placed in hands of deputy sheriff after execu-

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tion was put in hands of sheriff but served before execution it was entitled to priority.

Syl. 2 (VI, 78). State replevy of goods held by federal attachment.

Approved in Dorashow v. Ott, 134 Fed. 745, 67 C. C. A. 644, suit in equity in district court by bankruptcy trustee against adverse claimant of property is not reviewable in circuit court of appeals under Comp. St. 1901, p. 3433, though defendant sought to be restrained from prosecuting state court replevin; In re Moody, 131 Fed. 529, where bankruptcy receiver takes possession of property in possession of adverse claimant, it may determine right of ownership; In re Mertens, 131 Fed. 514, where goods sold by buyer's bankruptcy trustee, bankruptcy court could enjoin seller from suing trustee in state court for conversion of proceeds; In re Spitzer, 130 Fed. 880, 66 C. C. A. 35, upholding jurisdiction over trover against trustee in bankruptcy to recover value of property converted as part of assets of estate.

Distinguished in Guaranty Trust Co. v. North Chicago St. R. Co., 130 Fed. 805, 806, 65 C. C. A. 65, pending in federal court of creditor's suit against railroad for which receiver appointed, but whose road is operated by state court receiver of its lessee not ground for enjoining state court from trying suit by stockholders to enjoin delivery of amended lease.

Syl. 5 (VI, 83). Federal courts determine own jurisdiction.

Distinguished in Ingraham v. National Salt Co., 139 Fed. 687, where federal attachment levied on land of corporation and pending action, state insolvency receiver appointed who sold all corporation's property, federal court would not enjoin receiver from enjoining marshal selling land on execution.

Syl. 6 (VI, 83). Citizenship—Ancillary suits.

Approved in Hatcher v. Hendrie etc. Co., 133 Fed. 270, 68 C. C. A. 19, following rule; Julian v. Central Trust Co., 193 U. S. 113, 48 L. 640, 24 Sup. Ct. 399, federal court which has decreed foreclosure sale may entertain supplemental bill by purchaser under decree to enjoin sale to satisfy state judgments on cause of action arising subsequent to confirmation of sale; O'Connor v. O'Connor, 146 Fed. 997, in federal equity suit to set aside dismissal of action at law, service of process may be made though parties reside out of district; Ames etc. Co. v. Big Indian etc. Co., 146 Fed. 179, 180, in federal equity suit to protect water rights against subsequent appropriators who are citizens of states other than complainant, court may entertain cross-bill by some of defendants against complainant and codefendants; Campbell v. Golden Cycle Min. Co., 141 Fed. 613, applying rule to suit to enjoin action at law for possession of mining claims.

Distinguished in Guardian Trust Co. v. Kansas City etc. Ry. Co., 146 Fed. 340, denying federal jurisdiction to enjoin state court from prosecuting action against foreclosure purchaser on its liability to pay mortgagor's debt under agreement for reorganization; Columbia etc. Co. v.

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Nunamaker, 73 S. C. 556, 53 S. E. 998, rule that bill to restrain action at law in same court is ancillary does not apply to suit in common pleas to restrain condemnation proceedings in special statutory tribunal from which appeal lies to common pleas.

24 How. 461-465, 16 L. 753, HOWARD v. BUGBEE.

Syl. 1 (VI, 85). Redemption—Statute void as to prior mortgages.

Approved in Hooker v. Burr, 194 U. S. 425, 48 L. 1052, 24 Sup. Ct. 706, upholding amendments to Cal. Code Civ. Proc., § 702, relating to time of redemption and interest as to rights of foreclosure purchaser buying after amendment; Harrison v. Remington Paper Co., 140 Fed. 392, holding void Kan. Act 1898, c. 10, repealing acts giving creditors action against stockholders on suspension of business of corporation, as against contracts made prior to its passage; Welsh v. Cross, 146 Cal. 633, 106 Am. St. Rep. 63, 81 Pac. 233, amendment of 1897 to Code Civ. Proc., § 702, extending time for redemption does not apply to judgments existing at time of its passage.

24 How. 465-508, 16 L. 701, PERIN v. CAREY.

Syl. 5 (VI, 87). Equitable jurisdiction over charities.

Cited in dissenting opinion in Danforth v. Oshkosh, 119 Wis. 290, 97 N. W. 268, arguendo.

Syl. 6 (VI, 88). Corporation's power to hold land for charity.

Cited in Danforth v. Oshkosh, 119 Wis. 281, 97 N. W. 265, arguendo.

Syl. 7 (VI, 88). Charity defined.

Approved in Grant v. Saunders, 121 Iowa, 81, 100 Am. St. Rep. 310, 95 N. W. 411, upholding bequest in trust for poor to be given by trustee to such objects and persons as she thinks best to help; Crow v. Clay County, 196 Mo. 260, 95 S. W. 375, bequest for tuition or education of poor children under age of sixteen within certain district is a charity.

24 How. 526-532, 16 L. 760, KNIGHT v. SCHELL.

Syl. 1 (VI, 92). Duties—Importation of filled barrels exported empty.

Approved in Franklin Sugar Ref. Co. v. United States, 137 Fed. 658, additional duty on sugar assessable under act authorizing such duty on goods receiving bounty in exporting country is based on invoice weight and not on weight on arrival.

24 How. 536-544, 16 L. 762, BERTHOLD v. GOLDSMITH.

Syl. 1 (VI, 93). Partnership defined.

Approved in Burton v. United States, 142 Fed. 62, where one partner deposits nonmailable matter in mail in execution of joint enterprise with knowledge of other, latter is guilty under Rev. St., § 3893.

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Syl. 7 (VI, 94). Partnership—Profit sharing—Power of partner.

Approved in Fechteler v. Palm Bros., 133 Fed. 467, 469, 66 C. C. A. 336, contract between two firms giving each privilege of buying at cost from other and providing for payment by each to other of percentage of gross sales, does not constitute partnership.

24 How. 544-553, 16 L. 765, WHEELER v. NESBITT.

Syl. 6 (VI, 96). Malicious prosecution—Probable cause defined.

Approved in United States v. Green, 136 Fed. 628, applying rule in proceeding for removal of trial to another district of defendant charged with bribery of postal official to promote sale of goods to government.

24 How. 553-631, 16 L. 770, GAINES v. HENNEN.

Syl. 2 (VI, 97). Proof of lost or destroyed will.

Approved in Ewing v. McIntyre, 133 Mich. 462, 95 N. W. 541, probate court may admit lost or destroyed will to probate. See 110 Am. St. Rep. 475, note.

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1 Black, 23-35, 17 L. 29, DUTTON v. STRONG.

Syl. 1 (VI, 103). Riparian owner's right to wharf out.

Approved in Small v. Harrington, 10 Idaho, 520, 79 Pac. 468, upholding right to build piers for logs across stream.

Distinguished in Sutter v. Heckman, 1 Alaska, 88, owner of uplands on sea in Alaska, has no title to tide lands in front of his property.

Syl. 2 (VI, 105). Public and private piers distinguished.

Approved in Weems Steamboat Co. v. People's Steamboat Co., 141 Fed. 456, 457, single carrier leasing wharf on navigable river in country where it constitutes only access to river cannot exclude other carriers from using it on payment of wharfage; Thousand Island Steamboat Co. v. Visger, 179 N. Y. 210, 71 N. E. 765, under grant of lands under navigable waters on which riparian owner had erected dock for promoting commerce of state, use of dock was open to public on payment of compensation.

Syl. 3 (VI, 105). Pier on non-navigable water not public.

Approved in Louisville etc. R. R. Co. v. West Coast Naval etc. Co., 198 U. S. 498, 49 L. 1141, 25 Sup. Ct. 745, wharf in harbor of city at foot of street, built by railroad under city permit for facilitation of own traffic is not public wharf.

(VI, 103). Miscellaneous. Cited in Southern Pac. Co. v. Western Pac. Ry. Co., 144 Fed. 199, determining title to Oakland waterfront;

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Peoria v. Central Nat. Bank, 224 Ill. 57, 79 N. E. 300, water's edge and not surveyed meander line is shore line from which lines drawn to show accretion rights of riparian owners.

1 Black, 39-53, 17 L. 52, WEIGHTMAN v. THE CITY OF WASHINGTON.

Syl. 3 (VI, 107). City's liability for defective streets.

Approved in Naumburgh v. City of Milwaukee, 146 Fed. 647, 648, Milwaukee liable for negligence of city bridge tender in operating bridge; City of Guthrie v. Swan, 5 Okl. 783, 51 Pac. 564, municipality is liable for injuries caused by neglect to repair streets.

Distinguished in dissenting opinion in Naumburgh v. City of Milwaukee, 146 Fed. 656, majority holding Milwaukee liable for negligence of city bridge tender in operating bridge.

1 Black, 55-62, 17 L. 94, UNITED STATES v. BABBIT.

Syl. 2 (VI, 109). Implications as part of statute or contract.

Approved in Brewster v. Lanyon Zinc Co., 140 Fed. 812, construing covenant for forfeiture in oil lease; Theis v. Commrs. of Washita County, 9 Okl. 651, 60 Pac. 508, under Statutes 1890, county commissioners cannot issue warrants for bridges unless first authorized to do so by vote of people; Riggins v. Richards, 97 Tex. 236, 77 S. W. 948, Waco Charter Act, 273, providing for removal by council of officers for incompetency, etc., after due notice, sufficiently provides mode of procedure; dissenting opinion in Armour Packing Co. v. Lacy, 200 U. S. 237, 50 L. 458, 26 Sup. Ct. 232, majority upholding N. C. Laws 1903, c. 247, taxing local business of foreign meat packing house; dissenting opinion in Silver Springs etc. R. R. Co. v. Van Ness, 45 Fla. 583, 34 So. 891, majority holding clause in deed of right of way for railroad, providing that if phosphate beds be found on line of survey railroad would remove tracks to adjacent land on notice, gave action for damages for breach thereof.

Syl. 3 (VI, 111). Provisos in statutes.

Approved in United States v. Downing, 146 Fed. 59, provision in par. 626, Free List, § 2, Tariff Act 1897, for "products of crude petroleum" does not include articles not composed in chief value of petroleum, though petroleum predominates in quantity.

1 Black, 80-94, 17 L. 41, HAGER v. THOMPSON.

Syl. 4 (VI, 113). Setting aside settlement for fraud.

Approved in Daly v. Busk Tunnel Ry. Co., 129 Fed. 521, 64 C. C. A. 87, upholding settlement made by surety on contractor's bond. See 100 Am. St. Rep. 446, note.

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1 Black, 101-107, 17 L. 33, STILES v. DAVIS.

Syl. 1 (VI, 115). Attachment of goods in carrier's hands.

Approved in Pittsburgh etc. Ry. Co. v. Cox, 36 Ind. App. 297, 73 N. E. 122, where shipper's consigned goods to themselves under assumed names, innocent carrier not liable as garnishee to shipper's creditors under writ served during transit; Cornell v. Mahoney, 190 Mass. 266, 76 N. E. 665, it is good defense to action against warehouseman for conversion that goods had been attached by third person.

1 Black, 108-115, 17 L. 35, BAGS OF LINSEED (SEARS v. WILLS).

Syl. 2 (VI, 116). Ship owner has lien till freight paid.

Approved in Portland etc. Mills Co. v. Portland etc. S. S. Co., 145 Fed. 692, where vessel stranded and it and cargo abandoned to insurer and part of cargo salved and sold and proceeds paid to its insurer and insurer of freight recovered same from shipper, latter not subrogated to carrier's lien; Lembeck v. Jarvis etc. Storage Co., 68 N. J. Eq. 496, 59 Atl. 362, where carrier delivered goods to consignee who agreed to hold them till freight paid, it cannot assert lien against innocent pledgee.

Syl. 5 (VI, 117). Loss of lien by delivery.

Approved in Michigan S. S. Co. v. Thornton, 136 Fed. 137, 69 C. C. A. 132, where charter provided for payment of freight on delivery of each cargo and for lien on all cargo for freight moneys, where consignee remitted to shipper, remittance impressed with trust in favor of ship owner; Kennedy v. Weston, 136 Fed. 168, 69 C. C. A. 78, arguendo.

1 Black, 121-131, 17 L. 70, THE ISLAND CITY.

Syl. 1 (VI, 118). Salvage—Abandonment with intent to return.

Approved in The Eliza Strong, 130 Fed. 99, 64 C. C. A. 433, vessel not derelict when master and crew abandon it temporarily to get assistance to save vessel and cargo.

(VI, 118.) Miscellaneous. Cited in Spaulding v. Alaska Com. Co., 1 Alaska, 503, citing argument of counsel.

1 Black, 140-149, 17 L. 135, BRYAN v. UNITED STATES.

Syl. 2 (VI, 119). Liability of surety on official bond.

See 103 Am. St. Rep. 933, note.

1 Black, 156-169, 17 L. 97, NELSON v. WOODRUFF.

Syl. 1 (VI, 120). Bill of lading as evidence of condition.

Approved in The Presque Isle, 140 Fed. 204, following rule.

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1 Black, 286-298, 17 L. 130, THE OHIO AND MISSISSIPPI R. R. CO. v. WHEELER.

Syl. 1 (VI, 131). Suit against corporation—Citizenship.

Approved in Thomas v. Ohio State University Trustees, 195 U. S. 210, 214, 49 L. 164, 165, 25 Sup. Ct. 24, allegation that University Trustees are citizens of Ohio is insufficient averment that they are Ohio corporation where statute creating them construed by state court as not conferring corporate powers; Lee v. Atlantic etc. R. Co., 150 Fed. 796, where one corporation is merged into another it remains citizen of state of its original incorporation for purposes of federal jurisdiction; Utah-Nevada Co. v. De Lamar, 133 Fed. 117, 66 C. C. A. 179, fact that defendant is president of corporation creates no presumption that he is citizen of same state as corporation.

Syl. 2 (VI, 134). Citizenship of reincorporated foreign corporation.

Approved in Dodd v. Louisville Bridge Co., 130 Fed. 195, following rule; United States v. Milwaukee etc. Transit Co., 142 Fed. 254, applying rule in suit under Elkins act of 1903, to enjoin rebating where officers of brewery owning majority of stock organized transit company which made shipping contracts for brewery on commission paid by carriers; Western Un. Tel. Co. v. Pittsburg etc. Ry. Co., 137 Fed. 437, applying rule in bill against consolidated railroad for specific performance of right of way contract between telegraph company and constituent railroads; Russell v. St. Louis etc. Ry. Co., 71 Ark. 454, 457, 75 S. W. 727, 728, foreign corporation complying with acts 1899, p. 43, c. 34, became domestic with right to exercise eminent domain; Baltimore etc. R. R. Co. v. Allen, 58 W. Va. 398, 112 Am. St. Rep. 985, 52 S. E. 469, 3 L. R. A. (N. S.) 608, railroads chartered by other states, but operating roads here have status of residents, and may be garnished without reference to jurisdiction in which debts due from them are payable

Syl. 3 (VI, 135). Suit by corporation of two states.

Approved in Walsey v. Chicago etc. Ry. Co., 147 Fed. 614, 615, railroad incorporated in two states and formed by consolidation of two companies, one of each state and consolidated with five other companies of one of states, cannot remove suit on ground of diversity of citizenship.

1 Black, 309-315, 17 L. 67, FARNI v. TESSON.

Syl. 1 (VI, 136). Necessary parties—Joint contract.

Approved in United States v. Churchyard, 132 Fed. 85, action on government contractor's bond given under Comp. St. 1901, p. 2523, is within federal jurisdiction regardless of citizenship of parties.

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1 Black, 316-325, 17 L. 208, HARKNESS v. UNDERHILL.

Syl. 3 (VI, 138). Agreement for fraudulent entry—Trusts.

Approved in dissenting opinion in Hartman v. Butterfield Lumber Co., 199 U. S. 341, 50 L. 220, 26 Sup. Ct. 63, majority holding one holding under trust deed from patentee with knowledge of prior conveyance of timber cannot challenge validity of conveyance because it was made pursuant to agreement for advance of money to pay entry fees.

1 Black, 350, 351, 17 L. 216, FARNEY v. TOWLE.

Syl. 1 (VI, 140). State decision against federal question.

Approved in Harding v. Illinois, 196 U. S. 88, 49 L. 397, 25 Sup. Ct. 176, following rule.

1 Black, 352-358, 17 L. 91, CREWS v. BURCHAM.

Syl. 1 (VI, 140). Indian treaty—Equitable interest in land.

Approved in Conway v. United States, 149 Fed. 267, where lands were allotted to Ponca squaw and buck whom she afterward married and later they selected adjoining lieu lands, but trust patent by mistake made to husband for both tracts she was entitled to half of land.

Distinguished in Wallace v. Adams, 143 Fed. 722, judgments of citizenship of Choctaw Nation, though final when rendered, were reviewable under subsequent acts enacted prior to allotments of land.

Syl. 5 (VI, 141). Record of deed and possession as notice.

See 104 Am. St. Rep. 344, note.

1 Black, 358-386, 17 L. 147, RICE v. THE MINN. & N. W. R. R. CO.

Syl. 5 (VI, 142). Railroad aid grant—Vesting title on condition.

Approved in Davis v. Moyles, 76 Vt. 32, 56 Atl. 176, grant of land from state conveys only such title as state had.

Syl. 6 (VI, 143). Public grants strictly construed.

Approved in Knoxville Water Co. v. Knoxville, 200 U. S. 35, 50 L. 359, 26 Sup. Ct. 224, municipal grant of waterworks franchise does not impliedly devest city of power to construct its own system; Story v. Woolverton, 31 Mont. 355, 78 Pac. 590, act of Congress of 1891, granting to Montana part of land of former military post did not grant right of use of water of stream from which government had taken water through ditch across other lands.

1 Black, 419-426, 17 L. 93, CLEVELAND v. CHAMBERLAIN.

Syl. 1 (VI, 146). Dismissal where appellant buys opponent.

Approved in Ridge v. Manker, 132 Fed. 601, 67 C. C. A. 596, decree against receiver of another court is not nullity on collateral attack merely because record fails to affirmatively show grant of leave to sue.

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Distinguished in Succession of Dauphin (Choppin v. Dauphin), 112 La. 134, 36 So. 298, fact that judgment signed after compromise affected does not deprive judgment of effect as res adjudicata.

1 Black, 427-431, 17 L. 168, VANCE v. CAMPBELL.

Syl. 1 (VI, 147). Patents—Infringement of part of combination.

Approved in Rawson etc. Co. v. Hunt Co., 147 Fed. 241, where drawings and descriptions of reissue are identical with original, validity of original not affected by invalidity of other claims; O. H. Jewell Filter Co. v. Jackson, 140 Fed. 344, holding claim to Jewell, patent No. 509,126, for improvements in filters not infringed.

1 Black, 436-450, 17 L. 173, THE JEFFERSON BRANCH BANK v. SKELLY.

Syl. 2 (VI, 150). Relinquishment of taxing power not presumed.

Approved in New York v. State Board of Tax Commrs., 199 U. S. 42, 105 Am. St. Rep. 702, 50 L. 77, 25 Sup. Ct. 715, special franchise tax imposed by N. Y. Laws 1899, c. 712, does not impair obligation of grant to operate street railroads on payment of percentage of earnings.

1 Black, 459-471, 17 L. 218, McCOOL v. SMITH.

Syl. (VI, 155). Statutes—Construction of well-known terms.

Approved in Whitfield v. Aetna Life Ins. Co., 144 Fed. 360, construing Rev. St. Mo. 1899, § 7896, relating to suicide as defense to insurance policy.

Syl. 4 (VI, 156). Repeals by implication not favored.

Approved in Territory v. Neville, 10 Okl. 99, 60 Pac. 796, Okl. Stat. 1893, c. 23, relating to changing of county seats, does not conflict with law authorizing opening of Cherokee outlet.

1 Black, 484-488, 17 L. 225, UNITED STATES v. JACKALOW.

Syl. 1 (VI, 159). Venue of federal criminal prosecutions.

Approved in Mahaffey v. Territory, 11 Okl. 226, 66 Pac. 346, upholding removal of criminal case, on application of territory, from one judicial district to another.

1 Black, 503-506, 17 L. 134, EX PARTE GORDON.

Syl. 1 (VI, 162). Mode of review of circuit criminal judgment.

Approved in Whitney v. Dick, 202 U. S. 139, 50 L. 966, 26 Sup. Ct. 584, circuit court of appeals cannot issue certiorari to review conviction in inferior federal court where only question is whether federal court has jurisdiction to punish offense; Barber Asphalt Pav. Co. v. Morris, 132 Fed. 955, 67 L. R. A. 761, 66 C. C. A. 55, granting mandamus to circuit judge to vacate order staying proceedings pending certain state court appeals. See 111 Am. St. Rep. 934, 936, 953, note.

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1 Black, 518-522, 17 L. 65, HOYT v. SHELDON.

Syl. 1 (VI, 163). Decision on federal point against appellant.

Approved in Giles v. Teasley, 193 U. S. 160, 48 L. 659, 24 Sup. Ct. 359, denying jurisdiction to review state order sustaining demurrer in action for damages for refusal to register negro as elector; Hutchinson v. Morris Bros., 190 Mo. 677, 89 S. W. 871, applying principle on appeal from circuit court to supreme court.

1 Black, 522-532, 17 L. 180, THE STEAMER ST. LAWRENCE.

Syl. 6 (VI, 165). Admiralty—Enforcement of state lien statute.

Approved in Fredericks v. James Rees & Sons Co., 135 Fed. 731, 68 C. C. A. 368, lien enforced by proceedings in rem under state statute for repairs and supplies to vessel in home port, is enforceable in admiralty.

1 Black, 603-635, 17 L. 191, CONWAY v. TAYLOR.

Syl. 2 (VI, 176). Nature of ferry franchise.

Approved in State v. Faudre, 54 W. Va. 128, 132, 102 Am. St. Rep. 927, 46 S. E. 272, 273, 63 L. R. A. 877, West Virginia cannot punish one acting under Ohio ferry franchise for charging one coming from Ohio more than allowed by West Virginia ferry law.

Syl. 3 (VI, 176). Ferry franchise across river boundary.

Approved in State v. Faudre, 54 W. Va. 123, 134, 136, 102 Am. St. Rep. 927, 46 S. E. 269, 274, 275, 63 L. R. A. 877, West Virginia cannot punish one acting under Ohio ferry franchise for charging one coming from Ohio more than allowed by West Virginia ferry law.

Syl. 7 (VI, 178). State's power to regulate ferries.

Approved in State v. Faudre, 54 W. Va. 133, 102 Am. St. Rep. 927, 46 S. E. 274, 63 L. R. A. 877, West Virginia cannot punish one acting under Ohio ferry franchise for charging one coming from Ohio more than allowed by West Virginia ferry law.

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2 Black, 372-394, 17 L. 282, CALAIS STEAMBOAT CO. v. VAN PELT'S ADMR.

Syl. 3 (VI, 183). Sales—Burden of proof to show agency.

Approved in In re Ducker, 133 Fed. 776, seller of merchandise to bankrupt under unrecorded conditional sale not entitled to priority as against subsequent creditors without notice, though such creditors had no lien on property.

2 Black, 408-418, 17 L. 292, KING v. ACKERMAN.

Syl. 3 (VI, 184). Devise with power to dispose creates fee.

Approved in McCaffrey v. Manogue, 196 U. S. 568, 49 L. 602, 25 Sup. Ct. 319, where testator gave all estate to heirs as devisees and charged debts on one receiving greater part, devisees took fees.

Syl. 4 (VI, 184). Extrinsic evidence to explain ambiguity.

Approved in Darnell v. Lafferty, 113 Mo. App. 303, 88 S. W. 791, admitting parol evidence to explain memorandum of sale of cows.

2 Black, 418-429, 17 L. 298, CHICAGO v. ROBBINS.

Syl. 1 (VI, 185). City's liability of defects in streets.

Approved in United States v. Port of Portland, 147 Fed. 868, Port of Portland is liable in damages for collision caused by negligence of employees in charge of one of its boats while performing duties on Columbia river; Graves v. City etc. Tel. Assn., 132 Fed. 388, where negligence of telephone company and traction company acting independently, in maintaining wires caused injuries, they may be joined as defendants. See notes, 111 Am. St. Rep. 704; 108 Am. St. Rep. 154.

Syl. 2 (VI, 188). Conclusiveness as to contractor of judgment against city.

Approved in Chesapeake etc. Towing Co. v. Western Assurance Co., 99 Md. 442, 58 Atl. 17, where in action by assignee of owner of goods against steamer for loss of cargo from plaintiff's scow en route to steamer, it was found scow was unseaworthy, plaintiff not estopped by finding in action against cargo insurer; Detroit v. Grant, 135 Mich. 629, 98 N. W. 406, where paving contractor who secured city from damages through his negligence was sued jointly with city and he procured discontinuance as to himself, he is not entitled to written notice of pendency of action.

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Syl. 5 (VI, 192). Liability of owner for contractor's negligence.

Distinguished in Hoff v. Shockley, 122 Iowa, 728, 98 N. W. 576, 101 Am. St. Rep. 289, 64 L. R. A. 538, property owner contracting with independent contractor to build house not liable for injury to passerby in street caused by latter's failure to guard and light sand pile in front of premises.

Syl. 6 (VI, 194). Following state decisions.

Approved in Three States Lumber Co. v. Blanks, 133 Fed. 482, 69 L. R. A. 283, 66 C. C. A. 353, decision of question as to what will excuse plaintiff's nonreturn of replevied property on his failure in action is one of local law not binding on federal courts; Phoenix Bridge Co. v. Castleberry, 131 Fed. 178, 65 C. C. A. 481, determining priority of jurisdiction on grant of letters of administration.

2 Black, 485-499, 17 L. 311, MISSISSIPPI ETC. R. R. CO. v. WARD.

Syl. 3 (VI, 203). Amount in dispute on abatement of nuisance.

Approved in Board of Trade v. Cella Commission Co., 145 Fed. 29, upholding jurisdiction over suit to enjoin use of board of trade's market quotations; Louisville etc. Co. v. Bitterman, 144 Fed. 44, 45, in suit by carrier to restrain scalping of excursion tickets, value of business sought to be protected determines amount in controversy; Anderson v. Bassman, 140 Fed. 14, applying principle in suit to enjoin diversion of water.

Syl. 5 (VI, 204). Abatement of interstate bridge as nuisance.

Approved in Haddock v. Haddock, 201 U. S. 577, 50 L. 873, 26 Sup. Ct. 525, holding mere domicile within state of one spouse does not give state court jurisdiction to render divorce against nonresident nonappearing defendant only constructively served. See 109 Am. St. Rep. 263, note.

Distinguished in dissenting opinion in Haddock v. Haddock, 201 U. S. 610, 50 L. 886, 26 Sup. Ct. 525, majority holding mere domicile in state of one of spouses gives state court no jurisdiction to render divorce against nonappearing nonresident defendant only constructively served.

Syl. 6 (VI, 204). Injunction against bridge in doubtful case.

Approved in Kansas City etc. R. R. Co. v. Wiygul, 82 Miss. 231, 33 So. 967, 61 L. R. A. 578, railroad having grant to bridge navigable stream may make repairs; Madison v. Ducktown etc. Iron Co., 113 Tenn. 351, 83 S. W. 662, refusing to enjoin alleged nuisance caused by operation of reduction plant after ten years' delay.

Syl. 7 (VI, 205). Restraining public nuisance at suit of individual.

See 107 Am. St. Rep. 205, note.

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2 Black, 499-509, 17 L. 278, NOONAN v. LEE.

Syl. 2 (VI, 206). Deeds—Reference to maps.

Approved in Pence v. Bryant, 54 W. Va. 269, 46 S. E. 277, where land has been dedicated for public street and it has been accepted by long use as street, dedication cannot be retracted though city has never formally accepted it.

Syl. 11 (VI, 208). Vendee's relief where title defective—Fraud.

Approved in United States v. Martindale, 146 Fed. 293, holding insufficient indictment under Rev. St., § 5209, charging director of national bank with misapplication of funds by means of draft.

Syl. 14 (VI, 208). Practice in federal courts not regulated by states.

Cited in Hatcher v. Hendrie etc. Co., 133 Fed. 272, 68 C. C. A. 19, arguendo.

2 Black, 510-518, 17 L. 305, GILMAN v. SHEBOYGAN.

Syl. 4 (VI, 211). Municipal aid to railroads.

Approved in State v. Chicago etc. R. R. Co., 195 Mo. 238, 93 S. W. 786, Const. Amend. 1900, relating to levy of additional road tax, is void, since it exempts certain cities.

2 Black, 544, 545, 17 L. 333, WRIGHT v. SILL.

Syl. 1 (VI, 219). Stare decisis.

Approved in dissenting opinion in Rush v. Buckley, 100 Me. 340, 61 Atl. 782, 70 L. R. A. 464, majority holding municipal judge issuing warrant and trying case under void ordinance not liable for false imprisonment.

2 Black, 545-553, 17 L. 333, PARKER v. WINNIPISEOGEE ETC. CO.

Syl. 1 (VI, 219). Equity—Objection of adequacy of law remedy.

Approved in Kane v. Luckman, 131 Fed. 618, 621, denying specific performance of contract for sale to plaintiff of certain cows at fixed price where they are not shown to have distinctive value; Nome-Snook Co. v. Simpson, 1 Alaska, 589, court may of own motion dismiss suit by adverse applicant for mining patent where notice of application in land office was fatally defective; Allen v. Myers, 1 Alaska, 117, denying jurisdiction over suit to quiet title after applicant for patent has initiated proceedings in land office under Rev. St., §§ 2325, 2326; dissenting opinion in Barnes v. Newton, 5 Okl. 460, 49 Pac. 1081, majority holding successful party in contest before land department may enjoin antagonist from further interference or occupancy of premises; Glenn v. West, 103 Va. 524, 49 S. E. 672, holder of mere equitable title out of possession cannot maintain bill to quiet against possessor claiming under tax title, between whom and himself no privity exists.

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Syl. 2 (VI, 220). Relief against nuisance where right clear.

Approved in Silver v. J. P. Eustis Mfg. Co., 130 Fed. 349, denying injunction against infringement of patent where defendant denies infringement and states he has abandoned sale of article and will not further infringe; Sampson etc. Co. v. Seaver etc. Co., 129 Fed. 772, refusing preliminary injunction to restrain publication of infringing city directory where its sale would not interfere greatly with sale of complainant's; American Plate Glass Co. v. Nicoson, 34 Ind. App. 654, 73 N. E. 629, holding insufficient petition to enjoin obstruction of stream causing water to back up and flood complainant's premises; Chessman v. Hale, 31 Mont. 589, 79 Pac. 257, in action for damages for maintenance of nuisance by pollution of water, plaintiff entitled to jury though he also asks for injunction; West & Severns v. Ponca City Milling Co., 14 Okl. 650, 79 Pac. 102, refusing to restrain completion of frame building within fire limits; Madison v. Ducktown etc. Iron Co., 113 Tenn. 350, 83 S. W. 662, refusing to enjoin maintenance of copper reduction plant after ten years' delay.

Syl. 4 (VI, 222). Laches bars equitable relief.

Approved in Madison v. Ducktown etc. Iron Co., 113 Tenn. 355, 83 S. W. 662, refusing to enjoin maintenance of copper reduction plant after ten years' delay.

2 Black, 554-563, 17 L. 265, LINDSAY v. HAWES.

Syl. 1 (VI, 222). Compelling conveyance where patent to trustee.

Approved in United States v. Detroit Timber etc. Co., 200 U. S. 339, 50 L. 506, 26 Sup. Ct. 282, bona fide purchaser of standing timber from holders of receiver's final receipts for purchase price of land entered, need not account to government for timber cut, where patent canceled for fraud of entryman.

Syl. 2 (VI, 223). Vacation of patent issued by mistake.

Approved in Le Marchel v. Teegarden, 133 Fed. 827, one attacking patent for mistake of fact must plead and prove evidence before department from which mistake resulted, and particular mistake made.

Distinguished in Estes v. Timmons, 199 U. S. 395, 50 L. 244, 26 Sup. Ct. 85, perjury on hearing before Land Department of land contest is not ground for equitable relief.

Syl. 3 (VI, 225). Possession by residence—Survey at time of entry.

Approved in Walker v. United States, 139 Fed. 413, where marshal has rendered accounts against government for services of deputies, which have been allowed and paid according to rules governing such

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allowances, government cannot recover them years afterward when he was out of office.

2 Black, 575-581, 17 L. 258, RUSSELL v. ELY.

Syl. 5 (VI, 228). Ejectment of mortgagee—Illegal possession.

Approved in Stouffer v. Harlan, 68 Kan. 138, 74 Pac. 611, 64 L. R. A. 320, mortgagee in possession of mortgaged premises who assumed possession under foreclosure proceedings, cannot be dispossessed without payment of mortgage debt.

2 Black, 590-593, 17 L. 271, NEBRASKA CITY v. CAMPBELL.

Syl. 1 (VI, 232). City's liability for defects in streets.

Approved in Naumburgh v. City of Milwaukee, 146 Fed. 647, holding Milwaukee liable for personal injuries caused by city drawbridge tender; Carson v. Genesee, 9 Idaho, 256, 108 Am. St. Rep. 127, 74 Pac. 866, city of second class liable in damages for injuries caused by defective sidewalk. See notes, 108 Am. St. Rep. 159; 103 Am. St. Rep. 262.

2 Black, 599-606, 17 L. 261, LEFFINGWELL v. WARREN.

Syl. 1 (VI, 234). Following state statutory construction.

Approved in Jacobson v. Massachusetts, 197 U. S. 24, 49 L. 649, 25 Sup. Ct. 358, following state court's construction of compulsory vaccination; Yocum v. Parker, 134 Fed. 213, 67 C. C. A. 227, following construction of state statutes relating to descent and alienation of lands. See 103 Am. St. Rep. 868, note.

Syl. 3 (VI, 238). Limitations as vesting title.

Approved in Linton v. Heye, 69 Neb. 455, 111 Am. St. Rep. 559, 95 N. W. 1041, applying rule; Northern Pac. Ry. Co. v. Ely, 197 U. S. 8, 49 L. 642, 25 Sup. Ct. 302, title to Northern Pacific right of way cannot be acquired by adverse possession under state law; Davis v. Mills, 194 U. S. 457, 48 L. 1071, 24 Sup. Ct. 692, Mont. Code Civ. Proc., § 554, prescribing new limitation for enforcement of corporate debts against directors of corporation which has not filed annual report, is valid as to actions outside state on liability incurred prior to enactment; First Baptist Church v. Harper, 191 Mass. 209, 77 N. E. 780, where religious society claimed defendant's ancestor took deed in own name on plaintiff's behalf, attendance of ancestor at divine worship on premises did not show his occupation was permissive; O'Keefe v. Dillenbeck, 15 Okl. 448, 83 Pac. 543, former owner cannot sue to avoid tax deed valid on face after one year from recordation of deed; Corkran Oil etc. Co. v. Arnaudet, 111 La. 586, 35 So. 756, arguendo.

Syl. 4 (VI, 240). Limitation statutes are statutes of repose.

Approved in Soper v. Lawrence Bros. Co., 201 U. S. 368, 50 L. 791, 26 Sup. Ct. 473, upholding Me. Pub. Laws 1895, c. 162, relating to adverse possession of wild land; Lynchburg etc. Co. v. Travelers'

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Ins. Co., 140 Fed. 724, under insurance policy providing for bar of action thereon not brought within thirty days after right accrues, limitation begins to run on clear announcement by insurer of refusal to pay.

2 Black, 606-610, 17 L. 317, PARRISH v. FERRIS.

Syl. 1 (VI, 240). Conclusiveness of state judgment in federal court.

Approved in Georgia R. etc. Co. v. Wright, 132 Fed. 917, state decision that charter precluded tax on corporation in excess of certain percentage of net earnings concludes state in subsequent suit for taxes for different year or under different statute; Lockhart v. Leeds, 12 N. M. 164, 76 Pac. 314, judgment against plaintiff on bill to declare mine location void for fraud and collusion by defendants and violation of agreement to locate claim for plaintiff, bars suit to have property declared to be held in trust.

2 Black, 613-619, 17 L. 309, ROTHWELL v. DEWEES.

Syl. 3 (VI, 242). Inurement of tax title acquired by agent.

Approved in Booker v. Crocker, 132 Fed. 8, 65 C. C. A. 627, where one of several bondholders secured by mortgage purchases superior liens takes them in trust for co-bondholders on condition that they contribute share of purchase price within reasonable time; First Congregational Church v. Terry, 130 Iowa, 518, 107 N. W. 307, wife of life tenant occupying premises with husband as homestead cannot obtain valid tax title as against remainderman; Coleman v. Coleman, 71 S. C. 524, 51 S. E. 252, where tenant in common conveyed entire fee to mother and children who conveyed fee to B who held for over twenty years, deed to B from cotenants of grantor not presumed as against children.

2 Black, 620-635, 17 L. 457, BANK OF COMMERCE v. NEW YORK.

Syl. 1 (VI, 245). State tax on national banks.

Approved in dissenting opinion in South Carolina v. United States, 199 U. S. 466, 50 L. 272, 26 Sup. Ct. 110, majority holding government may exact revenue license from dispensing agents of state which has taken charge of liquor business.

Distinguished in Hibernia Savings etc. Soc. v. San Francisco, 200 U. S. 313, 50 L. 496, 26 Sup. Ct. 265, United States treasury checks for accrued interest on government bonds are taxable by state in hands of owner; South Carolina v. United States, 199 U. S. 452, 50 L. 266, 26 Sup. Ct. 110, government may exact revenue license from dispensing agents of state which has taken charge of liquor business.

Syl. 2 (VI, 247). Tax on capital stock as tax on property.

Approved in Delaware etc. R. R. Co. v. Pennsylvania, 198 U. S. 354, 49 L. 1082, 25 Sup. Ct. 669, including in appraisement of capital

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stock of domestic corporation for tax purposes, value of coal mined by it within state but situated elsewhere, is illegal.

2 Black, 635-699, 17 L. 459, PRIZE CASES.

Syl. 3 (VI, 250). War defined.

Approved in Hamilton v. McClaughry, 136 Fed. 449, Boxer uprising of 1900, constituted "time of war" within fifty-eighth article of war relating to court-martials.

Syl. 4 (VI, 254). Judicial notice of civil war.

Approved in La Rue v. Kansas Mut. Life Ins. Co., 68 Kan. 543, 75 Pac. 495, taking judicial notice of existence of insurrection in Mindanao prior to 1902.

Syl. 8 (VI, 258). Ratification of President's invalid orders.

Approved in Lincoln v. United States, 202 U. S. 499, 50 L. 1119, 26 Sup. Ct. 728, collection of duties on imports to Manila not authorized by President's order of 1898, not ratified by Comp. St. Supp. 1905, p. 391, ratifying such order.

2 Black, 715-721, 17 L. 339, KOCHLER v. BLACK RIVER ETC. IRON CO.

Syl. 3 (VI, 263). Equitable foreclosure of illegally drawn mortgage.

Approved in Fourth Nat. Bank v. Camden L. Co., 142 Fed. 260, corporation's deed of trust executed by president and secretary to secure purchase price of property not impeachable for want of seal or want of authorization where corporation used property and made payments.

Syl. 4 (VI, 263). Corporate directors are trustees for stockholders.

Approved in Beach v. McKinnon, 148 Fed. 736, bill by receiver of insolvent corporation against director for accounting as to notes transferred by it to him must allege that transfer was fraudulent; In re Castle Braid Co., 145 Fed. 235, contract between corporation and directors for purchase of stock not prima facie void; Burnes v. Burnes, 137 Fed. 790, 70 C. C. A. 357, transfer of stock from corporation to trustee for majority of directors and others by controlling votes of that majority are voidable by stockholders; City Nat. Bank v. Goshen etc. Mills Co., 35 Ind. App. 579, 69 N. E. 211, director of insolvent corporation who resigned after it was agreed he should resign and have preference, is director for purpose of determining validity of preference. See 97 Am. St. Rep. 41, note.

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1 Wall. 5-16, 17 L. 515, CROSS v. DE VALLE.

Syl. 1 (VI, 271). Alien's power to hold land.

Approved in Louisville Property Co. v. Nashville, 114 Tenn. 221, 84 S. W. 812, failure of foreign corporation to file articles of incorporation as provided by statute is no bar to recovery for damages to property from change of street grade.

Syl. 2 (VI, 271). Cross-bill dependent on original.

Approved in Ames Realty Co. v. Big Indian Min. Co., 146 Fed. 169, 179, in federal suit to protect water rights against separate appropriators, all of whom citizens of different states from complainant, court may entertain cross-bill by any defendant setting up priority, irrespective of citizenship; Gilmore v. Bort, 134 Fed. 661, 662, in suit for cancellation of indemnity bond against loss by reason of deposit of funds in bank by indemnified's treasurer, where treasurer filed cross-bill alleging validity of bond and also praying release from liability on his own bond if first was invalid, treasurer could not object to voluntary dismissal of original bill; Blythe Co. v. Banker's Inv. Co., 147 Cal. 92, 93, 81 Pac. 285, decree rendered pro confesso on cross-bill may be vacated on motion after adjournment of term; Armstrong v. Mayer, 69 Neb. 194, 195, 95 N. W. 53, where, pending proceedings for possession of defendant's building occupied by plaintiff, latter sought to enjoin writ of restitution until review of judgment in unlawful detainer and to enjoin action until pending cause determined, cross-bill for damages for prosecuting vexatious appeals not maintainable.

1 Wall. 16-22, 17 L. 555, WRIGHT v. ELLISON.

Syl. 2 (VI, 274). Creation of equitable lien on fund.

Approved in Union Trust Co. v. Bulkeley, 150 Fed. 513, parol assignment of accounts and bill receivable to secure indorser creates valid lien as against assignor's bankruptcy trustee, though no notice given to creditors; In re Cramond, 145 Fed. 977, assignment to secure advances to prosecute work of all moneys due from city under paving contract gives equitable lien superior to lien of laborers given by Bankr. Act, § 64; dissenting opinion in San Francisco Nat. Bank v. Dodge, 197 U. S. 109, 49 L. 686, 25 Sup. Ct. 384, majority holding national banks discriminated against by taxing their shares, under Cal. Pol. Code, §§ 3608-3610, at market value while value of franchise not included in assessment of state banks.

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1 Wall. 25-43, 17 L. 604, CLEARWATER v. MEREDITH.

Syl. 2 (VI, 275). Legislative consent to corporate consolidation.

Approved in Jones v. Missouri-Edison El. Co., 135 Fed. 156, consolidation of corporations under Rev. St. Mo. 1899, § 1334, not invalidated by fact that one of constituent companies was itself created by prior consolidation.

Syl. 3 (VI, 275). Consolidation of corporations dissolves old.

Approved in Walsey v. Chicago etc. Ry. Co., 147 Fed. 614, where corporation formed by consolidation of Illinois and Iowa corporations consolidated with Iowa corporation, it became corporation of either state for purpose of federal jurisdiction; Gladding v. Saint Matthew's Church, 25 R. I. 635, 105 Am. St. Rep. 904, 57 Atl. 863, 65 L. R. A. 225, where testatrix bequeathed property to deaf-mute church, which, before her death, consolidated with another, and department of consolidated corporation carried on work with deaf mutes, later codicil making no reference to bequest did not substitute department for original legatee.

Distinguished in Lee v. Atlantic etc. R. Co., 150 Fed. 789, construing agreement as merger and not consolidation of corporations; Jones v. Missouri-Edison Elec. Co., 144 Fed. 775, upholding minority stockholder's right to avoid contract of consolidation for fraud.

Syl. 4 (VI, 276). Dissolution of stock subscriber's contract.

Approved in Brown v. Morton, 7 N. J. L. 29, 58 Atl. 96, provision in incorporation certificate that stockholders appearing as such on books shall be liable for unpaid subscriptions or assessments binds one becoming stockholder after organization and who at time of assessment had sold stock but had not surrendered certificate.

Syl. 5 (VI, 277). Consolidation of corporation at will of majority.

Approved in Spencer v. Seaboard Air Line Ry. Co., 137 N. C. 120, 49 S. E. 101, Priv. Law 1901, p. 463, c. 168, empowering majority of railroad stockholders to consolidate with other corporations is exercise of power of eminent domain.

Distinguished in Jones v. Missouri-Edison Elec. Co., 144 Fed. 776, upholding minority stockholder's right to avoid consolidation of corporations affected by fraud.

Syl. 10 (VI, 278). Judgment on demurrer as res adjudicata.

Approved in Board of County Commrs. v. Cross, 12 N. M. 76, 73 Pac. 616, following rule.

1 Wall. 43-53, 17 L. 609, THE COMMANDER-IN-CHIEF.

Syl. 4 (VI, 279). Admiralty—Specification of exceptions to master's report.

Approved in The Thomas M. Parsons, 129 Fed. 972, following rule; In re Davidson S. S. Co., 133 Fed. 413, applying principle to denial in answer as to competency of crew and seaworthiness of ship.

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Distinguished in Merrit etc. Co. v. Morris etc. Co., 132 Fed. 154, 155, general exception to amount of findings by commissioner in admiralty is sufficient where all evidence is attached to report of commissioner.

Syl. 5 (VI, 279). Admiralty—Parties in intervention in ship owner's suit.

Approved in The Nonpareil, 149 Fed. 525, carrier by water of merchandise may sue for its loss in behalf of all parties in interest though loss paid by insurance.

1 Wall. 53-60, 17 L. 544, HUTCHINS v. KING.

Syl. 8 (VI, 281). Appeal—Objections to rulings on evidence.

Approved in National Bank etc. v. Schufelt, 145 Fed. 510, following rule.

1 Wall. 69-73, 17 L. 514, EX PARTE DUBUQUE & PACIFIC R. R.

Syl. 1 (VI, 282). No new trial on reversal and direction of judgment.

Approved in American Soda Fountain Co. v. Sample, 136 Fed. 858, applying rule where circuit court decree upholding patent reversed.

1 Wall. 73-77, 17 L. 560, ORCHARDS v. HUGHES.

Syl. 4 (VI, 284). Mortgages—Execution for deficiency.

Cited in Hatcher v. Hendrie etc. Co., 133 Fed. 272, 68 C. C. A. 19, arguendo.

1 Wall. 78-80, 17 L. 547, EAMES v. GODFREY.

Syl. 1 (VI, 284). Patent for combination—Infringement.

Approved in Cortis v. American Street Lamp etc. Co., 145 Fed. 519, Cortis patent No. 613,648, for illuminating gas lamp, not infringed by mantle supporting device of Momand patent No. 781,-613.

1 Wall. 83-97, 17 L. 548, MERCER COUNTY v. HACKET.

Syl. 2 (VI, 288). Corporate bonds like commercial paper.

Approved in Cudahy Packing Co. v. State Nat. Bank, 134 Fed. 540, 545, 67 C. C. A. 662, provision in note for payment of attorney's fees in case it is not paid at maturity does not destroy negotiability.

1 Wall. 99-103, 17 L. 561, BURR v. DES MOINES R. R. & NAV. CO.

Syl. 3 (VI, 290). Appeal—Agreed statement of facts.

Approved in Anglo-American Land etc. Co. v. Lombard, 132 Fed. 734, 68 C. C. A. 89, applying rule to special finding by court tried by stipulation without jury.

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1 Wall. 109-116, 17 L. 551, MINNESOTA v. BACHELDER.

Syl. 1 (VI, 292). School lands—Congressional confirmation of pre-emption.

Approved in State v. Tully, 31 Mont. 378, 78 Pac. 764, arguendo.

Syl. 2 (VI, 292). Conclusiveness of land office receiver.

Approved in Smith v. Love, 49 Fla. 239, 38 So. 379, granting equitable relief where patent obtained by fraud.

1 Wall. 116-155, 17 L. 571, BRIDGE PROPRIETORS v. HOBOKEN CO.

Syl. 2 (VI, 293). Record must show federal question decided.

Approved in Chicago etc. Ry. Co. v. McGuire, 196 U. S. 133, 49 L. 417, 25 Sup. Ct. 200, suggestion of violation of federal right first made in petition for review in highest state court for judgment of intermediate appellate court is too late; Mathew v. Wabash Ry. Co., 115 Mo. App. 481, 81 S. W. 648, granting writ of error to state supreme court where, in action for personal injuries, defendant alleged train was engaged in interstate commerce and equipped with equipment required by interstate commerce commission which greatly increased risk.

Syl. 5 (VI, 295). Statutes—Construction of words.

Approved in Indianapolis etc. Transit Co. v. Andis, 33 Ind. App. 636, 72 N. E. 150, statute making employer liable for injuries to employee through negligence of employee having charge of "locomotive engine or train upon railroad," does not apply to one operating electric cars.

Syl. 6 (VI, 295). Impairment of exclusive bridge franchise.

Approved in Sault Ste. Marie Bridge Co. v. Powers, 138 Fed. 263, corporation organized under Missouri railroad incorporation act, to build and own bridge used solely for railroad purposes, is railroad within Acts 1901, p. 236, for taxation of railroads.

1 Wall. 166-175, 17 L. 681, SWEENY v. EASTER.

Syl. 1 (VI, 297). Notes—Indorsement of collection.

Approved in Winfield Nat. Bk. v. McWilliams, 9 Okl. 505, 60 Pac. 232, where bank receives check indorsed in blank for correspondent and parts with value, it is entitled to proceeds though check not actually collected until after failure of transmitting bank; Smith v. Bayer, 46 Or. 146, 79 Pac. 498, indorsee of note "for collection" may sue thereon in own name. See 111 Am. St. Rep. 428, note.

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1 Wall. 175-223, 17 L. 520, GILPCKE v. CITY OF DUBUQUE.

Syl. 1 (VI, 299). Corporation's negotiable paper—Municipal aid bonds.

Approved in Union Nat. Bank v. Neill, 149 Fed. 715, unauthorized act of member of trading partnership in signing firm name as accommodation indorser is no defense to firm as against bona fide purchaser; Board of Education v. Boyer, 5 Okl. 232, 47 Pac. 1092, where city board of education acts on petition to have territory annexed to city for school purposes, and orders territory attached and entry made in records, presumed that petition signed by majority of electors of annexed territory.

Syl. 6 (VI, 303). Impairment of contracts—Aid bonds—State decisions.

Approved in Gamble v. Rural Indep. School Dist., 146 Fed. 117, bona fide purchaser of negotiable school bond not affected by subsequent Iowa code amendment restricting recovery on negotiable paper procured by fraud; Board of Commrs. v. Tollman, 145 Fed. 763, federal court puts own construction on state constitutional provision where at time of issuance of railroad bonds there was no state decision construing constitution; Sedalia v. Donohue, 190 Mo. 418, 89 S. W. 389, where Kansas City court of appeals decided that tax bill issued by clerk in pursuance of resolution of council was valid, tax bills subsequently issued by clerk are not contracts impaired by subsequent supreme court decision denying their validity.

Distinguished in Tampa Waterworks Co. v. Tampa, 199 U. S. 243, 50 L. 173, 26 Sup. Ct. 23, upholding state decision that city could not by contract deprive itself of right to regulate rates conformably to statute; dissenting opinion in Muhlker v. New York etc. R. R. Co., 197 U. S. 573, 49 L. 879, 25 Sup. Ct. 522, majority holding owner of realty acquiring such when state courts had decided in favor of his contract rights to easements of light and air, is protected against impairment of easements by substitution of elevated railroad in lieu of surface road.

Syl. 14 (VI, 310). Enforcement of valid part of separable contract.

Approved in Minnesota Sandstone Co. v. Clark, 35 Wash. 472, 77 Pac. 805, invalidity of provision in contract for sale of stone at certain price that seller would pay to buyer freight rebates does not affect whole contract.

Distinguished in Potter v. Potter, 43 Or. 153, 72 Pac. 704, contract by which husband agrees to convey land to wife, provided papers drawn so that she releases dower in his land and the curtesy in her land, is void in entirety.

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1 Wall. 234-243, 17 L. 534, BALDWIN v. BANK OF NEWBURY.

Syl. 2 (VI, 314). Parol evidence—Note payable to cashier.

Approved in State v. Omaha Nat. Bank, 66 Neb. 865, 93 N. W. 321, where state warrant presented to bank was indorsed by president as such, he is not liable thereon individually.

1 Wall. 243-254, 17 L. 589, EX PARTE VALLANDIGHAM.

Syl. 3 (VI, 315). Certiorari by supreme court.

Approved in Whitney v. Dick, 202 U. S. 138, 139, 50 L. 965, 966, 26 Sup. Ct. 584, circuit court of appeals cannot issue original writ of certiorari to review conviction in inferior federal court.

1 Wall. 254-269, 17 L. 584, DUNHAM v. CINCINNATI ETC. RY. CO.

Syl. 1 (VI, 316). Mortgage of after-built road—Priority.

Approved in Fisher v. Zollinger, 149 Fed. 57, taking possession of mortgaged chattels by mortgagee within four months prior to mortgagor's bankruptcy does not operate as preferential transfer within Bankr. Act, § 60a. See 99 Am. St. Rep. 257, note.

1 Wall. 269-272, 17 L. 50, STURGIS v. CLOUGH.

Syl. 2 (VI, 318). Collusion—Entire cost of vessel as damages.

Distinguished in Critchfield v. Julia, 147 Fed. 73, where defendant, in consideration of services rendered, agreed to give plaintiff certain preferred stock in corporation to be formed, plaintiff may recover value of stock, determinable with reference to value of corporation's activities, though preferred stock not issued.

1 Wall. 274-282, 17 L. 536, GREGG v. VON PHUL.

Syl. 2 (VI, 320). Ejectment—Notice to quit to vendee in possession.

See 107 Am. St. Rep. 727, note.

1 Wall. 282-290, 17 L. 594, MALARIN v. UNITED STATES.

Syl. 2 (VI, 321). Redelivery of deed after alteration.

Approved in State v. Paxton, 65 Neb. 130, 90 N. W. 990, applying principle where bond after delivery was altered by addition of new sureties.

1 Wall. 298-311, 17 L. 540, MILLER v. TIFFANY.

Syl. 2 (VI, 323). Usury—Interest at place of performance.

Approved in Midland Sav. & Loan Co. v. Solomon, 71 Kan. 190, 79 Pac. 1079, where parties stipulate that bond shall be governed by law of certain state, fact that it is secured by mortgage on land situate in another state, where suit is brought, does not abrogate stipulation; Davis v. Vandy, 107 Mo. App. 448, 81 S. W. 460,

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where note given in one state is payable in another, under laws of which it is usurious, it is presumed that parties intended law of state where made to govern.

Syl. 3 (VI, 324). Lex loci contractus governs validity.

Approved in Easton v. Geo. Wostenholm & Son, 137 Fed. 530, 70 C. C. A. 108, where firm doing business in California and Costa Rica purchased goods in England through purchasing agent, under agreement that complainant advance price and other charges, for commission, contract governed by English law.

1 Wall. 317-326, 17 L. 684, GODFREY v. EAMES.

Syl. 1 (VI, 325). Patents—Withdrawal of application.

Approved in Hayes Young etc. Co. v. St. Louis Transit Co., 137 Fed. 82, 83, 70 C. C. A. 1, absence of prior user or sale of invention for more than two years prior to second application for patent is indispensable to its validity.

1 Wall. 330-332, 17 L. 553, JONES v. GREEN.

Syl. 3 (VI, 327). Equitable relief where lien acquired.

Approved in Craddock v. Fulton, 140 Fed. 429, upholding federal equity jurisdiction over suit under Code W. Va. 1899, c. 106, providing that one having claim against nonresident may sue in equity to establish claim and enforce attachment lien; Viquesney v. Allen, 131 Fed. 24, 65 C. C. A. 259, simple contract creditor cannot maintain bill in equity in federal court to set aside fraudulent conveyance of debtor's property.

Distinguished in George v. Wallace, 135 Fed. 293, 68 C. C. A. 40, upholding suit by holder of note against trustee of national bank in process of liquidation to enforce pledge lien on assets of bank.

1 Wall. 337-340, 17 L. 557, LEE v. WATSON.

Syl. 1 (VI, 329). Appeal—Amount in dispute—Prayer.

Approved in Shewalter v. Lexington, 143 Fed. 163, in action to quiet title as against street improvement certificates amounting to less than $2,000, amount of certificates and not value of land constitutes subject matter of action; Smith v. Chesapeake etc. Ry. Co., 118 Ky. 829, 82 S. W. 411, where, in action against railroad for killing horse, value of animal was alleged to be $150, and pending defendant's motion for direction of verdict petition amended to show $75 the additional damages, no appeal lies to court of appeals, as amendment was shown; Gallagher v. Asphalt Co. of America, 65 N. J. Eq. 283, 55 Atl. 269, refusing to dismiss bill by creditor to enjoin corporation from exercising franchise on ground that federal court had jurisdiction of assets of corporation under receivership.

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1 Wall. 340-352, 17 L. 581, BLOOMER v. MILLINGER.

Syl. 1 (VI, 330). Rights of purchaser of patent medicine.

Approved in Wagner Typewriter Co. v. Webster Co., 144 Fed. 410, manufacturer selling together patented ribbon mechanism for typewriters and ribbon spool for replacement not chargeable with infringement.

1 Wall. 359-371, 17 L. 642, SCHUCHARDT v. ALLENS.

Syl. 2 (VI, 332). Sales—Action for false warranty.

Approved in Kimber v. Young, 137 Fed. 747, 70 C. C. A. 178, upholding complaint joining cause of action for breach of warranty in sale of bonds with cause of action for deceit growing out of different phases of same transaction.

Syl. 4 (VI, 332). Peremptory nonsuit.

Distinguished in Huntt v. McNamee, 141 Fed. 294, and Parks v. Southern Ry. Co., 143 Fed. 278, both upholding refusal of plaintiff to take nonsuit after all evidence introduced.

Syl. 6 (VI, 332). Direction of verdict.

Approved in Peltomaa v. Katahdin etc. Co., 149 Fed. 283, denying motion for new trial in action for personal injuries; Gunn v. Union R. R. Co., 27 R. I. 327, 62 Atl. 121, upholding R. I. Gen. Laws 1896, c. 251, § 11, authorizing supreme court to direct judgment without further trial by jury.

Syl. 7 (VI, 334). New trial is discretionary.

Cited in Semet-Solway Co. v. Wilcox, 143 Fed. 840, arguendo.

1 Wall. 371-374, 17 L. 502, HARDY v. JOHNSON.

Syl. 1 (VI, 334). Tenant in common may recover entirety.

Limited in Williams v. Coal Creek etc. Co., 115 Tenn. 580, 93 S. W. 573, one tenant in common, in ejectment, can recover only portion to which he shows title.

1 Wall. 405-411, 17 L. 616, BRONSON v. LA CROSSE R. R. CO.

Syl. 1 (VI, 339). District court's regulation of ministerial duties.

Approved in First Nat. Bank v. State Nat. Bank, 131 Fed. 431, 65 C. C. A. 414, where appeal perfected under Bankr. Act, § 25a, from judgment rejecting debt, district court, pending appeal, cannot entertain motion for rehearing.

1 Wall. 456-486, 17 L. 505, INSURANCE COMPANIES v. WRIGHT.

Syl. 2 (VI, 341). Usage to contradict written contract.

Approved in Moore v. United States, 196 U. S. 166, 49 L. 433, 25 Sup. Ct. 202, existence of custom at San Francisco requiring consignee to designate discharging berth does not affect contract requiring delivery on wharf to quartermaster at Honolulu; Kentucky Vermillion etc. Co. v. Norwich etc. Ins. Co., 146 Fed. 698, refusing parol testimony to explain

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meaning of term "watchman's clause" in insurance policy; Lillard v. Kentucky Distilleries etc. Co., 134 Fed. 182, 67 C. C. A. 74, admitting evidence of usage to show that contract to deliver distillery slop at distiller's feeding lot contemplated division of lot into pens supplied with troughs.

1 Wall. 486-490, 17 L. 688, HOMER v. THE COLLECTOR.

Syl. 1 (VI, 342). Customs duties—Specific duty.

Approved in Brennan v. United States, 136 Fed. 747, 69 C. C. A. 395, reversing 129 Fed. 838, and holding limes in brine are not dutiable as "limes" but are free; United States v. Boden, 133 Fed. 840, canned pineapples containing amount of sugar not sufficient to preserve them are dutiable under lower rate provided by Tariff Act 1897, par. 263.

1 Wall. 518-531, 17 L. 646, WHEELER v. SAGE.

Syl. 2 (VI, 344). Equitable aid—Both parties guilty of fraud.

Approved in Johnston v. Little, 141 Ala. 387, 37 So. 593, where two persons agree to purchase realty through their agent, deception by agent and one of vendees as to purchase price at expense of other subjects them to account.

1 Wall. 531-578, 17 L. 650, BURR v. DURYEE.

Syl. 1 (VI, 344). Patent for machine.

Approved in Regina Co. v. New Century Music Box Co., 138 Fed. 908, Brachhausen & Reissner patent No. 500,371, for music-box, is void for lack of invention in view of prior art; Lourie Imp. Co. v. Lenhart, 130 Fed. 129, 64 C. C. A. 456, construing Lenhart patent No. 415,542, for adjustable sliding plate for plows.

Syl. 3 (VI, 345). Patent for principle is void.

Approved in Bradford v. Expanded Metal Co., 146 Fed. 987, Golding patent No. 527,242, for process of making open or shut metal, is void; Edison etc. Elec. Co. v. Crouse etc. Elec. Co., 146 Fed. 548, construing Metzger patent No. 489,682, for electric lamp socket; Cortis v. American Street Lamp etc. Co., 145 Fed. 519, Cortis patent No. 613,648, for lamp, not infringed by mantle supporting device of Momand patent No. 781,613; American Crayon Co. v. Sexton, 139 Fed. 566, construing Liedke patent No. 476,051, for machine for making crayons; Scott v. Fisher etc. Mach. Co., 139 Fed. 145, Bellis patent No. 561,559, for improvement in knitting machines, not infringed by machine of Fisher patent No. 656,535; Cook v. Heywood Bros. etc. Co., 131 Fed. 762, Bowen patents, for improvements in chairs and furniture, relating to sachet device, not infringed by device of Luppino reissue No. 11,919.

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1 Wall. 592-604, 17 L. 638, POMEROY'S LESSEE v. BANK OF INDIANA.

Syl. 3 (VI, 348). Every exception insertable in bill.

Approved in Nichols v. Board of Commrs., 13 Wyo. 8, 76 Pac. 682, where final judgment is not supported by pleadings, it may be reversed on record proper without any bill of exceptions.

Distinguished in Kipp v. Burton, 29 Mont. 102, 101 Am. St. Rep. 544, 74 Pac. 87, 63 L. R. A. 325, execution not under seal of court is voidable only.

Syl. 5 (VI, 348). Appeal—Necessity for bill of exceptions.

Cited in Cassatt v. Mitchell Coal & Coke Co., 150 Fed. 43, arguendo.

1 Wall. 604-627, 17 L. 619, SPAIN v. HAMILTON'S ADMINISTRATOR.

Syl. 4 (VI, 350). Usury—Payment dependent on contingency.

Approved in Tayloe v. Buzard, 114 Mo. App. 625, 90 S. W. 126, where on sale of piano vendee gave note for $300 with highest legal interest, payable in monthly installments of $10, and providing that if payments did not exceed $3 monthly they should be applied as rent and rights of purchaser to piano forfeited, contract not usurious.

1 Wall. 637-644, 17 L. 601, BEAVER v. TAYLOR.

Syl. 2 (VI, 353). What is res gestae.

Approved in Sprinkle v. United States, 141 Fed. 816, 817, applying rule on trial of defendants jointly indicted for defrauding government of liquor revenue licenses; Guild v. Pringle, 130 Fed. 423, 64 C. C. A. 621, declaration by man who had fallen into trench at night that there was no light, made ten minutes after fall, in answer to direct question, is no part of res gestae.

Syl. 3 (VI, 353). Adverse possession—Proof of payment of taxes.

Approved in Schauble v. Schulz, 137 Fed. 394, 69 C. C. A. 581, under Rev. Codes N. D. 1899, § 3491a, providing for establishment of title by adverse possession of ten years and payment of all taxes, period begins to run with adverse possession and not on date of first tax payment.

1 Wall. 655-657, 17 L. 673, BLOSSOM v. MILWAUKEE ETC. R. R. CO.

Syl. 1 (VI, 355). Purchaser at master's sale may appeal.

Approved in Julian v. Central Trust Co., 193 U. S. 112, 48 L. 639, 24 Sup. Ct. 399, federal court which has decreed foreclosure sale may entertain supplemental bill in original suit by purchaser to enjoin sale of property to satisfy judgments of state court in suits against mortgagor to which he was not party; Empire State etc. Co. v. Hanley, 136 Fed. 104, 69 C. C. A. 87, where, after affirmance, appellee filed in trial court motion to proceed containing notice to sureties on supersedeas

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bond that he would apply for summary decree on bond, summary judgment authorized.

1 Wall. 690-702, 17 L. 677, UNITED STATES v. GOMEZ.

Syl. 1 (VI, 357). Time to appeal.

Approved in In re McCall, 145 Fed. 902, time limit for appeal from order confirming bankrupt's composition with creditors begins to run from entry of order on records.

Syl. 3 (VI, 358). Appeal—Certiorari—Diminution of record.

Approved in Flickinger v. First Nat. Bank, 145 Fed. 164, motion to strike transcript because it does not contain all evidence is not proper.

1 Wall. 702-706, 17 L. 503, HOUGHTON v. JONES.

Syl. 3 (VI, 358). Scope of cross-examination.

Approved in Resurrection G. Min. Co. v. Fortune G. Min. Co., 129 Fed. 674, 64 C. C. A. 180, following rule; Balliet v. United States, 129 Fed. 696, 697, 64 C. C. A. 201, instructing in prosecution for using mails with intent to defraud, that jury may consider failure of defendant, who has testified, to explain material matters within his knowledge is misleading.

Distinguished in dissenting opinion in Resurrection G. Min. Co. v. Fortune G. Min. Co., 129 Fed. 681, 64 C. C. A. 180, majority following rule.

1 Wall. 721-745, 17 L. 627, ROMERO v. UNITED STATES.

Syl. 1 (VI, 359). Mexican archives as evidence.

Approved in Sprinkle v. United States, 141 Fed. 820, on trial for violation of internal revenue laws, regulations of revenue commissioner are admissible.

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2 Wall. 1-9, 17 L. 762, DERMOTT v. JONES.

Syl. 1 (VI, 362). Excuse for failure to perform contract in time.

Approved in Cottrell & Son v. Smokeless Fuel Co., 148 Fed. 597, under contract for sale and delivery of coal from certain mine, deliveries to be subject to strikes which might delay or prevent shipment, performance not excused because strike increased cost of production; Link Belt etc. Co. v. United States, 142 Fed. 247, under construction contract providing penalty for each day's delay, delay caused by inability to obtain steel owing to congestion of mills is no excuse; Indian Mt. etc. Coal Co. v. Ascheville Ice etc. Co., 134 N. C. 584, 47 S. E. 120, under contract for sale of all coal defendant may require during certain period, defendant cannot be compelled to reduction by pro-rating with other patrons of plaintiff; Wheeling etc. Foundry Co. v. Wheeling etc. Iron Co., 58 W. Va. 66, 51 S. E. 131, under contract to deliver machinery by certain time, fact that contractor acted in good faith and with due diligence is no defense to deduction of penalty from contract price.

Syl. 2 (VI, 363). Assumpsit—Performance not according to contract.

Approved in United States v. Molloy, 144 Fed. 325, 327, where plaintiff's delivery of stone was not in accordance with contract, but defendant accepted it with knowledge, he is liable on quasi contract for value of stone delivered less losses due to breach.

2 Wall. 10-23, 17 L. 776, HAWTHORNE v. CALEF.

Syl. 2 (VI, 366). Obligation of contracts—Stockholder's liability.

Approved in Harrison v. Remington Paper Co., 140 Fed. 392, Laws Kan. 1898, c. 10, p. 27, repealing existing laws and substituting new form of action to enforce stockholder's liability, is void as to pre-existing creditors; Knickerbocker Trust Co. v. Myers, 133 Fed. 767, Act. Md. 1904, p. 579, c. 337, substituting single suit in equity against stockholders for benefit of all corporation's creditors is void as against pre-existing creditors.

Distinguished in Miners' etc. Bank v. Snyder, 100 Md. 65, 108 Am. St. Rep. 390, 59 Atl. 708, 68 L. R. A. 213, upholding Acts 1904, p. 597, c. 337, substituting remedy by bill in equity to enforce stockholder's liability as against creditor who has sued under prior law but has not obtained judgment.

2 Wall. 24-35, 17 L. 780, DRURY v. FOSTER.

Syl. 2 (VI, 368). Delivery of deed in blank.

Approved in Burk v. Johnson, 146 Fed. 219, where name of grantee in escrow deed left blank at request of vendee, subsequent filling in

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blank and recordation did not invalidate it; Carr v. McColgan, 100 Md. 477, 60 Atl. 608, act of mortgagees in accepting benefit of mortgage loan and participating in foreclosure sale estops them from excepting to sale on ground that scrivener's authority to fill in blanks rested only in parol.

Syl. 4 (VI, 369). Married woman's power of attorney.

Approved in Lewis v. Apperson, 103 Va. 632, 106 Am. St. Rep. 903, 49 S. E. 981, 68 L. R. A. 867, where wife joined commissioner in suit to subject lands to liens, in executing deed relinquishing dower rights, she is not estopped from claiming dower rights as husband did not join in deed.

2 Wall. 35-45, 17 L. 755, MILES v. CALDWELL.

Syl. 3 (VI, 370). Res adjudicata—Parol to explain judgment.

Approved in Halford v. James, 136 Fed. 555, 556, 69 C. C. A. 263, where issues involved in former case do not appear in entry of judgment pleaded as res adjudicata, and pleadings have been burned, parol is competent to prove issues.

2 Wall. 45-56, 17 L. 868, TOOL CO. v. NORRIS.

Syl. 1 (VI, 372). Payment for getting government contract.

Approved in Le Tourneux v. Gilliss, 1 Cal. App. 552, 82 Pac. 629, note for money advanced for expenses of lobbyist is void.

Distinguished in Padilla v. Padilla, 11 N. M. 546, 70 Pac. 564, where brother secured judgment in court of claims on Indian depredation claim for property owned by himself and sister, and before judgment he agreed to pay sister her share when he received money, sister may recover.

Syl. 2 (VI, 374). Contracts to control government's business operation.

Approved in Hazelton v. Sheckels, 202 U. S. 78, 79, 50 L. 941, 942, 26 Sup. Ct. 567, agreement to sell land at specified price is void where consideration was rendition of services in calling attention of Congress of desirability of land for public building site; Sussman v. Porter, 137 Fed. 164, agreement to procure consent of abutting property owners for construction of trolley line and to obtain franchise for same for contingent fee, is void; McGuffin v. Coyle, 15 Okl. 668, 674, 85 Pac. 960, 962, note payable to officers of railroad in personal capacity on condition that road built to certain point by certain time, is void.

2 Wall. 57-70, 17 L. 818, BANKS v. OGDEN.

Syl. 1 (VI, 375). Accretions belong to riparian owner.

Approved in Sherwin v. Bitzer, 97 Minn. 256, 106 N. W. 1048, statement in deed that land conveys certain number of acres does not control description of lots abutting on water, where water has receded.

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Syl. 4 (VI, 376). Boundaries—Grant bordering on river.

Approved in Western Union Tel. Co. v. Krueger, 36 Ind. App. 353, 74 N. E. 26 and Sweatman v. Bathrick, 17 S. D. 159, 95 N. W. 427, both following rule.

2 Wall. 70-87, 17 L. 732, BROOKS v. MARTIN.

Syl. 1 (VI, 377). Accounting where illegal contract performed.

Approved in Doyle v. Burns, 123 Iowa, 512, 99 N. W. 204, where after plaintiff and defendant agreed to locate mining claims, latter sold claims receiving stock therefor, and defendant testified plaintiff made false proofs in perfecting title, and he and defendant directors in company to which mines sold for more than they were worth, plaintiff's actions not bar to suit to recover half of defendant's stock; Padilla v. Padilla, 11 N. M. 553, 70 Pac. 566, where brother recovered judgment in court of claims on Indian depredation claim for property owned by himself and sister, and before judgment promised to give sister her share, sister may recover; Monahan v. Monahan, 77 Vt. 143, 59 Atl. 172, 70 L. R. A. 935, where property put in defendant's name without his knowledge to avoid taxation, it is impressed with trust in favor of owner; Overholt v. Burbridge, 28 Utah, 416, 79 Pac. 563, bucket-shop accepting margin to protect short sale to one buying long and who paid bucket-shop, for seller, difference between market and sale price, cannot defend suit by seller for profit on ground of illegality of transaction. See 99 Am. St. Rep. 327, note.

Distinguished in Smythe v. Evans, 209 Ill. 383, 70 N. E. 909, where corporation let contract for construction under supervision of engineer, contracts between engineer and contractor for division of profits is unenforceable; dissenting opinion in Stewart v. Wright, 147 Fed. 345, majority permitting recovery of money by one who was induced to participate in fake footrace and was given "double cross."

Syl. 2 (VI, 381). Purchase of partner's interest—Good faith.

Approved in Shevlin v. Shevlin, 96 Minn. 413, 105 N. W. 263, applying rule in holding that burden of proof to show no undue influence was on elder brother with respect to stock transfer by drunken and financially embarrassed brother.

2 Wall. 87-96, 17 L. 836, BADGER v. BADGER.

Syl. 1 (VI, 382). Laches barring equitable relief.

Approved in dissenting opinion, Werner Co. v. Encyclopedia etc. Co., 134 Fed. 1024, majority holding, in suit for infringement of copyright where complainant had no knowledge of infringing articles until less than eighteen months before suit, suit not barred by laches.

Syl. 2 (VI, 384). Gross laches bars equitable relief.

Approved in Frank v. Butler Co., 139 Fed. 124, suit in equity for enforcement of aid bonds barred after lapse of twenty years from refusal of registration; Kansas City etc. Ry. Co. v. Stevenson, 135

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Fed. 557, where defendant on resigning railroad presidency retained title to property donated to aid railroad extension, claiming same as his own, nine years' delay after knowledge in suing to establish trust bars suit; Ryan v. Woodin, 9 Idaho, 531, 75 Pac. 262, applying rule to suit to set aside sheriff's deed brought five years after its execution; Patterson v. Hewitt, 11 N. M. 18, 23, 66 Pac. 556, 558, 55 L. R. A. 658, applying rule in suit to enforce trust in mining claims; Bryan v. Dupoyster, 130 Fed. 87, 64 C. C. A. 417, arguendo.

Syl. 3 (VI, 386). Pleading excuse for laches.

Approved in Kleinclaus v. Dutard, 147 Cal. 250, 81 Pac. 518, applying rule in suit to enforce express trust; Succession of Dauphin (Choppin v. Dauphin), 112 La. 140, 36 So. 300, applying rule in suit to annul judgment for fraud; Patterson v. Hewitt, 11 N. M. 42, 66 Pac. 564, 55 L. R. A. 650, applying rule in suit to enforce trust in mining claims.

2 Wall. 106-110, 17 L. 905, HUMISTON v. STAINTHORP.

Syl. 1 (VI, 387). Final decree—Reference for account.

Approved in Ex parte National Enameling etc. Co., 201 U. S. 160, 50 L. 708, 26 Sup. Ct. 404, denying cross-appeal by complainant from decree granting injunction against infringement of valid claims and dismissing bill as to those held invalid; Australian Knitting Co. v. Gormly, 138 Fed. 103, decree sustaining validity of patent and awarding injunction against infringement, and referring question of damages to master, being interlocutory, is not conclusive of validity of patent in subsequent suit prior to rendition of final decree.

2 Wall. 110-122, 17 L. 857, MURRAY v. LARDNER.

Syl. 2 (VI, 388). Presumptions on transfer of note before maturity.

Approved in First Nat. Bank v. Moore, 148 Fed. 957, 958, following rule; dissenting opinion in Williams v. Neely, 134 Fed. 18, 69 L. R. A. 232, 67 C. C. A. 171, arguendo. See 103 Am. St. Rep. 984, note.

Syl. 3 (VI, 389). Notes—Bona fides—Suspicion of defect.

Approved in Fillebrown v. Hayward, 190 Mass. 480, 77 N. E. 47, where director sold his stock to another knowing that sale gave him control of company, and payments made by check signed by purchaser as treasurer, seller not charged with notice of misappropriation of funds by treasurer; Unaka Nat. Bank v. Butler, 113 Tenn. 585, 83 S. W. 658, where check was indorsed in blank and lost, merchant accepting same from customer unknown to him, but supposed to be payee, was bona fide purchaser; Bank v. Ohio Valley etc. Co., 57 W. Va. 630, 50 S. E. 882, 70 L. R. A. 312, applying principle where bank discounted note indorsed in blank by principal, with knowledge that holder was agent; dissenting opinion in Peirson v. McNeal, 137 Mich. 177, 100 N. W. 465, majority holding assignments of mortgages delivered to assignee prior to assignor's death.

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Syl. 4 (VI, 391). Negotiable instruments—Vendor's lack of title.

Approved in Massachusets National Bank v. Snow, 187 Mass. 163, 72 N. E. 960, where note was indorsed in blank by payee and stolen from him by maker, who discounted it at bank, latter may collect it.

2 Wall. 123-134, 17 L. 859, HECKERS v. FOWLER.

Syl. 2 (VI, 394). Reference of cause.

Approved in Burrell v. United States, 147 Fed. 49, where parties agreed to trial before arbitrators, federal court may enter judgment on award.

Distinguished in Swift v. Jones, 145 Fed. 493, circuit judge cannot in action at law, with consent of parties, order trial before special master.

2 Wall. 160-177, 17 L. 922, FREEBORN v. SMITH.

Syl. 2 (VI, 396). Admission of states—Pending causes.

Approved in Wallace v. Adams, 143 Fed. 726, upholding 32 Stat. 641, whereby citizenship court was created and empowered to review final judgments of federal courts under 29 Stat. 339, as against litigants who had not procured allotments prior to its passage.

Syl. 4 (VI, 397). Correspondence between partners and agent.

Approved in Inman Bros. v. Dudley etc. Lumber Co., 146 Fed. 455, letter from agent to principal reporting interview between agent and third party is inadmissible against latter.

2 Wall. 177-190, 17 L. 822, SHEETS v. SELDEN.

Syl. 3 (VI, 398). "Month" means calendar month.

Approved in Brock v. Kirkpatrick, 72 S. C. 495, 52 S. E. 593, construing code provision relative to publication of notice of hearing of application for discharge of executor.

Syl. 4 (VI, 398). Computation of time.

Approved in Maxwell v. Jacksonville etc. Co., 45 Fla. 455, 34 So. 265, applying rule to time for taking testimony in equity suits under rule of court.

2 Wall. 191-198, 17 L. 839, CHITTENDEN v. BREWSTER.

Syl. 1 (VI, 399). Nonappellant cannot complain of error.

Approved in Field v. Barber Asphalt Paving Co., 194 U. S. 621, 48 L. 1153, 24 Sup. Ct. 784, cross-appeal to review only nonfederal questions decided against defendant may be taken directly to supreme court from circuit court.

Syl. 4 (VI, 400). Assignment for creditors—Priority of jurisdiction.

Approved in Louisville Trust Co. v. Knott, 130 Fed. 825, 65 C. C. A. 158, where, after expiration of franchise, assets of corporation delivered to trustee as liquidator and minority stockholders filed state

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suit for inspection of books, state court had jurisdiction prior to federal court in subsequent creditor's suit based on collusive judgment.

2 Wall. 200-210, 17 L. 793, BANK TAX CASE.

Syl. 1 (VI, 401). State tax on capital stock.

Approved in Delaware etc. R. R. Co. v. Pennsylvania, 198 U. S. 354, 49 L. 1082, 25 Sup. Ct. 669, including, in appraisement of capital stock of domestic corporation, value of coal mined within state but situated elsewhere, is illegal; Scottish Union etc. Ins. Co. v. Bowland, 196 U. S. 626, 49 L. 626, 25 Sup. Ct. 345, bonds in which foreign insurance company is required to invest portion of capital stock under Ohio statutes are personal property within tax laws.

Syl. 2 (VI, 401). State tax on bank's government bonds.

Approved in First National Bank v. Douglas Co., 124 Wis. 21, 102 N. W. 317, real estate belonging to national bank acquired with and constituting part of capital is exempt from taxation; dissenting opinion in South Carolina v. United States, 199 U. S. 466, 50 L. 272, 26 Sup. Ct. 110, majority holding United States may exact liquor license tax from state's dispensing agents.

Distinguished in Hibernia Savings etc. Soc. v. San Francisco, 200 U. S. 313, 50 L. 496, 26 Sup. Ct. 265, United States treasury checks for accrued interest on government bonds are taxable by state in hands of owner; South Carolina v. United States, 199 U. S. 452, 50 L. 266, 26 Sup. Ct. 110, United States may exact liquor license tax from state's dispensing agent.

2 Wall. 210-217, 17 L. 783, FLORENTINE v. BARTON.

Syl. 2 (VI, 404). Presumptions—Sale of decedent's realty.

Approved in Threadgill v. Colcord, 16 Okl. 470, 85 Pac. 710, purchaser at master's sale under decree in suit to which he is party cannot collaterally attack decree.

2 Wall. 218, 17 L. 755, COOKE v. UNITED STATES.

Syl. 1 (VI, 406). Amount in controversy—Subsequent reduction.

Approved in Kirby v. American Soda etc. Co., 194 U. S. 146, 48 L. 913, 24 Sup. Ct. 619, upholding federal jurisdiction where cross-bill seeks recovery of $1,700 on contract for exchange of goods where original bill dismissed on complainant's motion prayed cancellation of agreement to pay $2,025, in consideration of exchange.

2 Wall. 219-237, 17 L. 788, SMITH v. UNITED STATES.

Syl. 1 (VI, 219). Variation in agreement—Subscribed by surety.

Approved in Jeigler v. Hallahan, 131 Fed. 209, 66 C. C. A. 1, surety for lessee under contract binding tenant to pay rent and deliver premises in good condition at end of term is discharged by modification of lease by provision for termination of lease by destruction of premises.

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2 Wall. 237-251, 17 L. 827, MILLER v. SHERRY.

Syl. 3 (VI, 410). Compelling conveyance of property out of jurisdiction.

Approved in Fuller v. Horner, 69 Kan. 470, 77 Pac. 89, creditor's suit, after lapse of limitations, to subject property bought with proceeds of fraudulent sale is barred though proceeds first invested in another state.

Syl. 5 (VI, 410). Purchaser pendente lite.

Approved in Bridger v. Exchange Bank, 126 Ga. 829, 56 S. E. 101, lis pendens begins from filing of cross-complaint as to matters therein alleged.

2 Wall. 252-258, 17 L. 785, MARINE BANK v. FULTON BANK.

Syl. 1 (VI, 411). Relation between bank and depositor.

Approved in Burton v. United States, 196 U. S. 302, 49 L. 488, 25 Sup. Ct. 243, averment charging receipt of checks at St. Louis and payment thereon there not supported by evidence showing check drawn on St. Louis bank received by defendant in Washington and there deposited in bank for collection; Board of Commrs. v. Patterson, 149 Fed. 233, where cashier of insolvent bank was county treasurer and deposited taxes in bank, county could recover same from receiver plus proceeds of loans of such taxes made by bank; Schinotti v. Whitney, 130 Fed. 781, money deposited in New York at interest subject to check is "money lent" within Civ. Code La., art. 3538, prescribing limitations for recovery thereof; Retan v. Union Trust Co., 134 Mich. 8, 95 N. W. 1008, deposits in bank made by county clerk of deposits in court are not special deposits entitled to priority on failure of bank; Bank of Blackwell v. Dean, 9 Okl. 631, 60 Pac. 228, determining whether deposit was general or special.

2 Wall. 283-312, 17 L. 725, BRONSON v. LA CROSSE RY. CO.

Syl. 3 (VI, 418). Defense by stockholders where directors refuse.

See 97 Am. St. Rep. 41, note.

Distinguished in Bowling Green Tr. Co. v. Virginia etc. R. Co., 132 Fed. 924, individual holders of small minority of railroad bonds cannot intervene in foreclosure to displace trustee, who is plaintiff, where no fraud on his part is charged.

2 Wall. 320-328, 17 L. 817, CASE v. BROWN.

Syl. 1 (VI, 420). Patents—Claim for combination.

Approved in Cortis v. American Street Lamp etc. Co., 145 Fed. 519, Cortis lamp patent No. 613,648, not infringed by mantle supporting device of Momand patent No. 781,613; American Crayon

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Co. v. Sexton, 139 Fed. 566, construing Liedke patent No. 476,051, for crayon-making machine.

2 Wall. 328-349, 17 L. 871, HARVEY v. TYLER.

Syl. 1 (VI, 421). No exceptions to instructions as whole.

Approved in Montana Min. Co. v. St. Louis etc. Co., 147 Fed. 906, where judge, after instructing jury, but before sending them out, retired to chambers and there heard and allowed exceptions, he need not thereafter allow exceptions; Mountain Copper Co. v. Van Buren, 133 Fed. 8, 66 C. C. A. 151, it is improper to permit exceptions to be noted in presence of jury and specification of objection to be noted in the record later; Steel Rail Supply Co. v. Baltimore etc. Ry. Co., 130 Fed. 434, 64 C. C. A. 635, exception to so much of charge as states that only question for consideration is certain question does not support assignment based on failure to submit another question.

Syl. 4 (VI, 422). Collateral attack—Judgment of court of general jurisdiction.

Approved in Fowler v. Jenks, 90 Minn. 78, 95 N. W. 889, appointment of new trustee under Bankr. Act, § 44, on reopening bankrupt estate, without prior action on part of creditors, is not invalid on collateral attack.

Syl. 5 (VI, 423). Judgment—Court of general jurisdiction—Special powers.

Distinguished in Taylor v. Huntington, 34 Wash. 458, 75 Pac. 1105, judgment of court of general jurisdiction foreclosing tax lien cannot be vacated on ground that affidavit of publication did not show holder of delinquency certificate had paid all accrued taxes.

2 Wall. 450-474, 17 L. 805, PACIFIC MAIL STEAMSHIP CO. v. JOLIFFE.

Syl. 1 (VI, 432). Quasi contract for half pilotage.

Approved in In re United Button Co., 140 Fed. 502, claim for unliquidated damages resulting from injury to property not reduced to judgment cannot be liquidated under Bankr. Act, § 63b.

Syl. 3 (VI, 432). Repeal of statute—Quasi contracts.

Approved in Eidman v. Tilghman, 136 Fed. 143, 69 C. C. A. 139, legacies left by testator, dying within one year prior to amendment of 1901 to sections of war revenue act taxing inheritances are not taxable thereunder.

Syl. 4 (VI, 434). Repealing statute same as repealed.

Approved in Campbell v. California, 200 U. S. 92, 50 L. 387, 26 Sup. Ct. 182, enactment of new inheritance tax law after decision of state court that prior act did not deny equal protection does not convert federal question into moot one; Pratt v. Dudley, 73 Ark. 541, 84 S. W. 783, under repealing act of 1901, relating to levee

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districts, commissioners created thereby could recover from county treasurer moneys collected by him under levee act of 1893; Wilson v. Head, 184 Mass. 517, 69 N. E. 318, construing amendment of 1901 to act of 1890, providing for recovery of payments made on sales on margin.

2 Wall. 501-510, 17 L. 851, LEVY COURT v. CORONER.

Syl. 1 (VI, 437). Actions against municipality.

Distinguished in Duncan v. Willits, 4 Penne. (Del.) 496, 57 Atl. 370, action ex contractu does not lie against county.

2 Wall. 510-525, 17 L. 900, RAILROAD CO. v. SOUTLER.

Syl. 1 (VI, 438). Following mandate of appellate court.

Approved in Ex parte Marks, 136 Fed. 170, 69 C. C. A. 80, where mandate directed trial court to take such further proceedings as, according to right and justice, ought to be had, trial court could correct mistake in computation of interest.

2 Wall. 525-538, 17 L. 765, UNITED STATES v. STONE.

(VI, 439.) Miscellaneous. Cited in Hollister v. United States, 145 Fed. 779, as to effect of scire facias.

Syl. 2 (VI, 440). Land officer cannot cancel predecessor's acts.

Approved in Sage v. Rudnick, 91 Minn. 334, 100 N. W. 108, pendency before Interior Department of asserted claim to public land does not suspend running of limitations in favor of adverse claim.

Syl. 4 (VI, 441). Setting aside patent in equity.

Approved in United States v. Laam, 149 Fed. 583, government may sue in equity to cancel patent issued through mistake under homestead law to tract selected by state as school land where selection had not yet been approved; dissenting opinion in United States v. Ju Toy, 198 U. S. 277, 49 L. 1050, 25 Sup. Ct. 644, majority holding decision of Secretary of Labor affirming denial of immigration officials of right of Chinese to land is conclusive on federal courts on habeas corpus.

Syl. 6 (VI, 442). Lands in reservation not patentable.

Approved in Behrends v. Goldsteen, 1 Alaska, 524, setting apart by Secretary of Navy, and use by department for naval purposes, of public lands, constitutes valid reservation by executive.

2 Wall. 538-550, 17 L. 833, THE ANN CAROLINE.

Syl. 6 (VI, 443). Admiralty—Allowance of interest.

Distinguished in Burrows v. Lownsdale, 133 Fed. 251, 66 C. C. A. 650, interest not allowed on damages awarded in admiralty for personal injury.

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2 Wall. 550-561, 17 L. 862, THE MORNING LIGHT.

Syl. 2 (VI, 443). Collision—Inevitable accident defined.

Approved in The Jumna, 149 Fed. 172, exonerating vessels for series of collision in East river following parting of towboat's hawser; Bleakley v. New York, 139 Fed. 808, injury to scow by floating ice, left on side of pier in river at place exposed and generally regarded as dangerous when ice moving, not caused by inevitable accident; The Cornell, 134 Fed. 697, applying rule where tows were driven together by sudden and severe windstorm when passing at proper distance; Kenova Trans. Co. v. Monongahela River etc. Coke Co., 56 W. Va. 73, 48 S. E. 846, where during fog in river in night towboat with barges drifted down and struck pier and one of barges cut loose and injured wharf-boat, injury caused by inevitable accident.

2 Wall. 591-605, 17 L. 812, READ v. BOWMAN.

Syl. 1 (VI, 447). Liability of sureties.

Approved in American Surety Co. v. Campbell & Zell Co., 138 Fed. 533, affirming Campbell & Zell Co. v. American Surety Co., 129 Fed. 493, holding bond to discharge attachment in action by corporation's receiver is liable to corporation where declaration had been amended substituting corporation for receiver.

2 Wall. 609-649, 17 L. 886, MINNESOTA CO. v. ST. PAUL CO.

Syl. 2 (VI, 448). Determining whether bill original or supplemental.

Approved in O'Connor v. O'Connor, 146 Fed. 997, suit in equity to set aside dismissal of judgment law action, being ancillary, service may be made on parties, though they reside outside district; Campbell v. Golden Cycle Min. Co., 141 Fed. 613, applying rule where minority stockholders filed bill to enjoin action at law against corporation on ground of conspiracy between plaintiff and controlling stockholders; Manning v. Berdan, 132 Fed. 384, bill in equity by nonresident defendant, to enjoin prosecution of law action, against plaintiff therein and nonresident corporation, which is not party to law action, not being ancillary, must be brought in district of residence of plaintiff or defendant; Nelson v. Meehan, 2 Alaska, 494, where judgment obtained by fraud was appealed and judgment affirmed, court could vacate judgment where pending final disposition of case in district court defendants, by affidavit, disclosed fraud.

2 Wall. 728-759, 17 L. 768. LOWLER v. BANGS.

Syl. 4 (VI, 452). Stipulation in charter-party as warranty.

Approved in Ross-Meehan Foundry Co. v. Royer Wheel Co., 113 Tenn. 376, 83 S. W. 168, 68 L. R. A. 829, contract to make and deliver for three years all castings required by defendant, each delivery to be paid for within sixty days, may be terminated on failure to make payments as provided.

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3 Wall. 1-19, 18 L. 129, LOVEJOY v. MURRAY.

Syl. 3 (VI, 455). Unsatisfied joint judgment as bar.

See 111 Am. St. Rep. 287, note.

Syl. 4 (VI, 456). Who are joint trespassers.

Approved in Saxlehner v. Eisner, 140 Fed. 941, where executive officers of corporations controlled defense in infringement suit against corporation, suit lies to recover of them individually damages therein decreed.

Syl. 5 (VI, 456). Satisfied judgment as bar to second recovery.

Approved in Carey v. Bilby, 129 Fed. 205, 63 C. C. A. 361, where one claiming damages against two jointly for fraudulent misrepresentations in sale accepted money from one and executed release, reserving right to sue other, release no defense to action against other; Louisville etc. Mail Co. v. Barnes, 117 Ky. 874, 876, 111 Am. St. Rep. 280, 281, 79 S. W. 264, 64 L. R. A. 574, acceptance of money from one joint tortfeasor in part satisfaction and in consideration of his release from further payment does not preclude recovery against other.

Syl. 7 (VI, 457). Unsatisfied judgment for conversion.

Approved in Moss v. Marks, 70 Neb. 704, 97 N. W. 1032, dismissal of action for conversion is no bar to replevin.

Syl. 8 (VI, 458). When third party concluded by judgment.

Approved in Harrington v. Atlantic etc. Tel. Co., 143 Fed. 337, majority stockholder who controls affairs of and transferred to corporation patents in violation of trust, is jointly liable with it for infringement; Australian Knitting Co. v. Gormly, 138 Fed. 97, 98, manufacturer of infringing article who assists purchaser in defending infringement suit, but who does not control defense, is not concluded by judgment; Friend v. Ralston, 35 Wash. 433, 77 Pac. 798, judgment by owner of building against contractor for breach of contract concludes surety.

3 Wall. 20-37, 18 L. 125, THE PLYMOUTH.

Syl. 1 (VI, 459). Admiralty—Locality of torts.

Approved in The San Rafael, 134 Fed. 752, railroad operating ferryboat may limit liability for injuries to passenger by collision of boat though passenger carried on through ticket.

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Syl. 2 (VI, 460). Admiralty—Maritime torts.

Distinguished in United States v. Evans, 195 U. S. 364, 368, 49 L. 236, 238, 25 Sup. Ct. 46, upholding admiralty jurisdiction over libel against vessel for collision with beacon built on piles in water.

3 Wall. 37-46, 18 L. 50, THE KIMBALL.

Syl. 4 (VI, 462). Charter-party binding ship and cargo.

Cited in Portland etc. Mills Co. v. Portland etc. S. S. Co., 145 Fed. 693, arguendo.

Syl. 5 (VI, 462). Advance freight money—Failure of carriage.

Distinguished in Burn Line v. United States & Australia S. S. Co., 150 Fed. 428, charter freight not recoverable where ship lost and bills of lading provided that freight prepaid should be considered as earned whether ship lost or not.

Syl. 7 (VI, 462). Note does not discharge debt.

Approved in The Winnebago, 141 Fed. 951, giving of notes by owner of vessel under construction to materialman to be used by him to raise funds is not payment depriving him of lien; Pflueger v. Lewis etc. Mach. Co., 134 Fed. 36, 67 C. C. A. 102, where bankrupt gave checks in payment of goods under agreement to provide funds in few days, seller entitled to original rights under sale; Davis v. Thomas, 66 Neb. 29, 32, 92 N. W. 187, 189, where part payment made and new note given for remainder and old note surrendered, but mortgage retained, mortgage was security for renewal note.

3 Wall. 51-83, 18 L. 137, THE BINGHAMPTON BRIDGE.

Syl. 3 (VI, 466). Charter rights against state not presumed.

Approved in Blair v. Chicago, 201 U. S. 472, 50 L. 831, 26 Sup. Ct. 427, Illinois amendatory act of 1865 did not extend right to use streets of Chicago for street railroad purposes to ninety-nine years, without reference to time limit fixed by city; Knoxville Water Co. v. Knoxville, 200 U. S. 35, 50 L. 359, 26 Sup. Ct. 227, municipal grant of waterworks franchise does not deprive city of right to construct own waterworks; Story v. Woolverton, 31 Mont. 355, 78 Pac. 590, congressional act granting state land of former reservation did grant right to use water of stream from which government had taken water by means of ditch across other lands.

3 Wall. 93-96, 18 L. 33, SHEBOYGAN COUNTY v. PARKER.

Syl. 3 (VI, 470). Commissioners to issue aid bonds not officers.

Approved in Daily Leader v. Cameron, 3 Okl. 682, 41 Pac. 636, Appropriation Act of 1895, § 25, does not create office of public printer.

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3 Wall. 97-105, 18 L. 49, SPARROW v. STRONG.

Syl. 1 (VI, 471). Appeal—Dismissal—Record not filed in time.

Approved in Perkins v. Boyd, 17 Colo. App. 448, 68 Pac. 1062, failure to file record within time specified by Code, § 389, not ground for dismissal where filed prior to motion to dismiss.

3 Wall. 107-114, 18 L. 170, YORK CO. v. CENTRAL R. R. CO.

Syl. 1 (VI, 473). Contract restricting carrier's liability.

Approved in Cau v. Texas etc. Ry. Co., 194 U. S. 430, 48 L. 1056, 24 Sup. Ct. 663, following rule; Ficklin v. Wabash R. R. Co., 117 Mo. App. 226, 93 S. W. 848, where contract valued cattle at $50 per head, and provided that valuation was made to obtain reduced rate and limit carrier's liability, and there was no other rate for cattle of such valuation, carrier's liability not limited.

Syl. 6 (VI, 477). Consideration—Contract limiting carrier's liability.

Approved in Cau v. Texas etc. Ry. Co., 194 U. S. 431, 48 L. 1057, 24 Sup. Ct. 663, following rule; Arthur v. Texas etc. Ry. Co., 139 Fed. 129, upholding sufficiency of consideration expressed in bill of lading for carriage of cotton to support provision exempting carrier from liability for loss by fire.

3 Wall. 114-145, 18 L. 116, CLIQUOT'S CHAMPAGNE.

Syl. 4 (VI, 479). Evidence to prove market value.

Approved in American Bonding Co. v. Regents of Idaho University, 11 Idaho, 192, 81 Pac. 614, admitting testimony of witness engaged in plumbing business for over five years as to difference in price of materials used in building and kind contract calls for, though he fixes difference from wholesaler's catalogue; McCrary v. Chicago etc. R. R. Co., 109 Mo. App. 572, 83 S. W. 83, evidence by shipper as to price paid for cattle at certain market on certain day not hearsay, though he was present only during part of day; Cameron Mill etc. Co. v. Anderson, 34 Tex. Civ. 232, 78 S. W. 972, physician who has never employed nurse, and has no personal knowledge of compensation of nurses, cannot testify as to reasonable and customary compensation of professional nurse.

Syl. 9 (VI, 480). Seizures—Burden of proof.

Approved in Low Foon Yin v. United States etc. Commr., 145 Fed. 796, upholding provision of Chinese Exclusion Act of 1892, placing burden of proof of right of Chinese without certificate to remain in United States on him.

Syl. 12 (VI, 481). Revenue laws not penal.

Approved in Scow No. 36, 144 Fed. 934, vessel used in depositing refuse matter in navigable waters is subject to penalty imposed by Comp. St. 1901, pp. 3542, 3544, though act was without knowledge of

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owners; State v. Western Union Tel. Co., 96 Minn. 19, 104 N. W. 570, upholding Laws 1901, p. 251, authorizing taxation of tangible and intangible property of telegraph companies as system.

3 Wall. 145-149, 18 L. 121, FENNERSTEIN'S CHAMPAGNE.

Syl. 1 (VI, 482). Admissibility of letters to show market value.

Approved in United States v. Greene, 146 Fed. 795, book entries regularly made and contemporaneously with transactions are admissible in criminal prosecution; Cameron Mill etc. Co. v. Anderson, 34 Tex. Civ. 232, 78 S. W. 972, physician who is not nurse and has never employed one, and has no personal knowledge of their compensation, cannot testify as to their reasonable and customary compensation.

3 Wall. 164-174, 18 L. 85, THE LOUISIANA.

Syl. 1 (VI, 485). Collision—Inevitable accident—Drifting vessel.

Approved in The William E. Reis, 143 Fed. 1015, where moored vessel broke mooring after rise in river caused by flood and collided with another vessel, she was liable, lines not being properly adjusted; Rebstock v. Gilchrist Transp. Co., 132 Fed. 177, holding where vessel moored away from channel and opposite bend in river, she was not in fault for collision with towed vessel which failed to make turn; The Drumcraig, 133 Fed. 804, breaking of ship from moorings and her drifting into collision not inevitable accident where there was warning of approach of storm, requiring putting out of more lines.

Syl. 4 (VI, 486). Collision—Inevitable accident—Breaking of moorings.

Approved in Bleakley v. New York, 139 Fed. 808, crushing of vessel by floating ice not caused by inevitable accident where left on exposed side of pier, which was regarded as dangerous when ice moving in river.

3 Wall. 175-196, 18 L. 186, BLACKBURN v. CRAWFORDS.

Syl. 4 (VI, 487). Baptismal register as evidence.

Approved in Collins v. German-American etc. Life Assn., 112 Mo. App. 219, 86 S. W. 894, following rule; Casley v. Mitchell, 121 Iowa, 98, 96 N. W. 726, admitting register of parish in England to prove marriage recorded therein by vicar.

Syl. 5 (VI, 487). Transcript of court record as evidence of illegitimacy.

Approved in Sorensen v. Sorensen, 68 Neb. 496, 497, 98 N. W. 839, decree denying alleged widow was decedent's widow in proceeding for nomination of administrator not binding on one claiming to be legitimate son of woman and decedent, on petition for distribution.

Syl. 8 (VI, 488). Privilege—Statements by testator to attorney.

Approved in Ex parte Gfeller, 178 Mo. 268, 77 S. W. 558, decedent's attorney in discovery proceedings in matter of estate may be asked

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when he last saw certain securities belonging to decedent, and whether at her death he had any money belonging to her.

Syl. 9 (VI, 488). Waiver of privilege by client.

Approved in Denuzio v. Scholtz, 117 Ky. 192, 77 S. W. 716, where attorney employed to incorporate business was told by owner that he would give employer stock, and on employment to prepare owner's will was told stock had been given, he may testify thereto.

3 Wall. 196-210, 18 L. 243, BLOSSOM v. RAILROAD CO.

Syl. 1 (VI, 489). Unaccepted highest bid—Right to confirmation.

See 97 Am. St. Rep. 661, note.

Syl. 6 (VI, 491). Judicial sales—Discretion of officers to adjourn.

See 97 Am. St. Rep. 655, note.

3 Wall. 210-214, 18 L. 180, TURNPIKE CO. v. THE STATE.

Syl. 1 (VI, 491). Nonexclusive corporate privileges.

Approved in Knoxville Water Co. v. Knoxville, 200 U. S. 37, 50 L. 361, 26 Sup. Ct. 24, municipal grant of waterworks franchise does not devest city of power to construct own system.

3 Wall. 225-231, 18 L. 194, THE CONVOY'S WHEAT.

Syl. 3 (VI, 493). Obstacle to delivery to connecting carrier—Notice.

Approved in Fisher v. Boston etc. R. R. Co., 99 Me. 343, 105 Am. St. Rep. 283, 59 Atl. 534, 68 L. R. A. 390, following rule.

3 Wall. 236-240, 18 L. 48, TERRITORY v. LOCKWOOD.

Syl. 2 (VI, 494). Quo warranto—Parties.

Approved in dissenting opinion in McDaid v. Territory, 1 Okl. 112, 30 Pac. 444, majority upholding territorial court's jurisdiction to issue mandamus to compel townsite trustees to issue deed to party they have decided is entitled thereto, and from whom they withhold deed merely because there is right to appeal from their decision.

3 Wall. 257-268, 18 L. 271, NEWELL v. NORTON AND SHIP.

Syl. 1 (VI, 496). Admiralty—Dismissal as to part of defendants.

Approved in The San Rafael, 141 Fed. 280, where exceptions to libel against vessel and owner sustained for misjoinder, libel may be amended to declare against vessel alone; Graham v. Oregon etc. Nav. Co., 134 Fed. 693, upholding amendment of libel in admiralty to show jurisdiction.

3 Wall. 268-275, 18 L. 165, THE OTTAWA.

Syl. 2 (VI, 498). Collision—Vigilant lookout necessary.

Approved in Brigham v. Luckenbach, 140 Fed. 326, applying rule where master was lookout and was in pilot-house; The Sitka, 132 Fed.

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864, holding steamer leaving anchorage at night liable for collision with steamer passing with tow, where steamer's lookout not vigilant; The Tarpon, 132 Fed. 278, applying rule where steamer collided with drifting scow; The Echo, 131 Fed. 631, master of steamer on roof of boat is not proper lookout; The Dauntless, 129 Fed. 722, 64 C. C. A. 243, holding steamer at fault for collision in river with launch.

3 Wall. 294-304, 18 L. 38, HAVEMEYER v. IOWA COUNTY.

Syl. 2 (VI, 499). Impairment of contracts by decisions.

Approved in Commrs. of Onslow Co. v. Tollman, 145 Fed. 763, federal courts put own construction on state constitution where at time of issuance of county aid bonds there was no state construction of constitutional provision relating thereto.

3 Wall. 310-315, 18 L. 179, THE GRANITE STATE.

Syl. 1 (VI, 502). Fault where barge moored out of track.

Distinguished in The Millville, 137 Fed. 975, vessel moored at end of pier on dark night in narrow channel constantly traversed by craft and not having lights, cannot recover for collision with passing tow.

Syl. 2 (VI, 502). Collision—Fault where moored vessel struck.

Approved in The Degama, 150 Fed. 324, fact that moving vessel colliding with moored barge not exonerated because being handled by tugs controlling her movements, unless defense pleaded and proved; Rebstock v. Gilchrist Transp. Co., 132 Fed. 177, vessel moored at side of channel opposite bend not liable for collision with tow where she was not in channel.

Syl. 3 (VI, 503). Damages—Cost of repairs.

Approved in The Mobila, 147 Fed. 883, measure of damages for total loss of vessel by collision is market value at time of loss determinable from opinions of experts.

3 Wall. 315-320, 18 L. 76, THE SUFFOLK CO. v. HAYDEN.

Syl. 1 (VI, 504). Abandonment of patent—Second application.

Approved in Kinnear Mfg. Co. v. Wilson, 142 Fed. 973, where, pending application for patent and after notice of rejection of one of claims, applicant applied for another patent in which he incorporated claim substantially like rejected one, and after allowance of last he canceled rejected claim of first, there was no abandonment of claim as allowed; Thomson-Houston Elec. Co. v. Black River Tr. Co., 135 Fed. 764, 68 C. C. A. 461, upholding Van Depoeli reissue No. 11,872, for traveling contract for electric railroads.

Syl. 2 (VI, 504). Patents—Second application.

Approved in Dodge Coal Storage Co. v. New York etc. R. R. Co., 139 Fed. 982, holding void Priz & Beaumont patents Nos. 668,960 and 688,111, for coal storage apparatus granted on division of same application.

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Syl. 5 (VI, 505). Infringement—Damages—Value of use.

Approved in Brown v. Lanyon, 148 Fed. 839, action at law not maintainable for sole purpose of recovering profits which infringer of patent has made; Dolen v. City of Boston, 138 Fed. 409, owner of patent may recover from user of infringing device as profits amount saved by substitution of such device.

3 Wall. 327-332, 18 L. 177, THOMPSON v. LEE COUNTY.

Syl. 4 (VI, 510). Retrospective curative bond acts.

Approved in Whitlock v. Hawkins, 105 Va. 259, 53 S. E. 406, upholding act of 1906, confirming assessments made in compliance with act of 1903.

3 Wall. 332-334, 18 L. 42, MINNESOTA CO. v. NATIONAL CO.

Syl. 1 (VI, 513). Law not changed where court's personnel changed.

Approved in Lockhart v. Leeds, 12 N. M. 164, 76 Pac. 314, judgment against plaintiff on bill to declare mine location void for fraud and collusion by defendants and violation of agreement to locate claim for plaintiff bars suit to have property declared to be held in trust.

(VI, 513). Miscellaneous. Cited in State v. Jennings, 47 Fla. 321, 35 So. 993.

3 Wall. 334-347, 18 L. 257, BUCK v. COLBATH.

Syl. 2 (VI, 514). Custodia legis—Property seized under process.

Approved in In re Moody, 131 Fed. 529, bankruptcy court may, by receiver, take property in possession of adverse claimant, which is alleged to have been fraudulently transferred, and may determine question of ownership; Tobin v. Central Vermont Ry. Co., 185 Mass. 341, 70 N. E. 433, where railroad's assets sold by federal receiver, state court has no jurisdiction of action for personal injuries sustained by employee of receiver; French v. White, 78 Vt. 96, 62 Atl. 36, 2 L. R. A. (N. S.) 804, property vesting in bankruptcy trustee is not subject to state attachment.

Syl. 6 (VI, 517). Process directing seizure—Liability of officer.

Approved in McKnight v. United States, 130 Fed. 666, 65 C. C. A. 37, sheriff liable for levying attachment against man on Indian wife's cattle on reservation which bore her own and Indian Department's brands, though running with husband's cattle.

Syl. 8 (VI, 519). Concurrent jurisdiction—Priority.

Approved in Guaranty Trust Co. v. North Chicago St. R. Co., 130 Fed. 807, 65 C. C. A. 65, pendency in federal court of creditor's suit against street railway for which receiver appointed, but whose road is operated under lease by federal receiver of lessee does not bar state to enjoin delivery of new lease.

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Syl. 10 (VI, 520). State suit against marshal—Wrongful seizure.

Approved in Guaranty Trust Co. v. North Chicago St. R. Co., 130 Fed. 805, 806, 65 C. C. A. 65, pendency in federal court of creditor's suit against street railway for which receiver appointed, but whose road is operated under lease by federal receiver of lessee, does not bar state suit to enjoin delivery of new lease.

Distinguished in In re Mertens, 131 Fed. 515, where sale of goods is rescinded by seller for fraud after buyer's bankruptcy, bankruptcy court may enjoin claimant from suing receiver in state court for conversion of proceeds.

3 Wall. 382-387, 18 L. 164, McGUIRE v. THE COMMONWEALTH.

Syl. 2 (VI, 524). Error to court rendering final decree.

Distinguished in Kentucky v. Powers, 139 Fed. 489, upholding right of removal of criminal case to federal court where defendant denied equal protection of laws in selection of jury.

3 Wall. 387-396, 18 L. 226, McGUIRE v. THE COMMONWEALTH.

Syl. 1 (VI, 525). Federal liquor license—State law.

Approved in In re Heff, 197 U. S. 505, 49 L. 855, 25 Sup. Ct. 506, sale of liquor within state to Indian, to whom allotment made under Act of 1887, violates 29 Stat. 506, c. 109; Hodge v. Muscatine Co., 196 U. S. 280, 49 L. 481, 25 Sup. Ct. 237, upholding Iowa Code, § 5007, making tax imposed thereby on business of selling cigarettes lien on premises where cigarettes sold; Newton v. McKay, 130 Iowa, 599, 102 N. W. 828, Code, §§ 2433, 2447, relating to mult taxes on sale of liquor, impose tax and not license, and is collectible by summary proceedings. See 104 Am. St. Rep. 314, note.

3 Wall. 396-407, 18 L. 34, COMSTOCK v. CRAWFORD.

Syl. 1 (VI, 526). Judgment—Collateral attack for irregularities.

Approved in White v. Martin, 2 Alaska, 498, judgment of probate court decreeing person insane and appointing guardian of his estate is not collaterally attackable; Beresford v. American Coal Co., 124 Iowa, 37, 98 N. W. 903, question of defect in administrator's bond cannot be raised in action brought by administrator; Larson v. Union P. R. Y., 70 Neb. 266, 97 N. W. 315, appointment of administrator contrary to Comp. St. 1901, c. 23, § 173, providing order of appointment, not collaterally attackable.

Syl. 1 (VI, 527). Collateral attack on probate sale.

Approved in Threadgill v. Colcord, 16 Okl. 470, 85 Pac. 710, where purchaser at master's sale under decree is party to suit, he cannot collaterally attack decree.

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3 Wall. 407-420, 18 L. 182, UNITED STATES v. HOLIDAY.

Syl. 1 (VI, 528). Circuit and district courts' criminal jurisdiction.

Approved in Renfrow v. United States, 3 Okl. 166, 41 Pac. 90, sale of liquor to Indian who has received allotment of land in Kansas and become elector of state violates Rev. St., § 2139.

Syl. 3 (VI, 529). Commerce with Indians—Sale of liquor.

Approved in Renfrow v. United States, 3 Okl. 170, 171, 41 Pac. 91, sale of liquor to Indian who has received allotment of land in Kansas and become elector of state, violates Rev. St., § 2139.

3 Wall. 420-424, 18 L. 263, DE SOBRY v. NICHOLSON.

Syl. 2 (VI, 530). Jurisdiction—New contract by diverse citizen.

Approved in Paige v. Town of Rochester, 137 Fed. 665, where assignee of town railroad aid subscription could sue alone in federal courts, he and his assignees can sue there together.

3 Wall. 448-460, 18 L. 245, GREEN v. VAN BUSKIRK.

Syl. 1 (VI, 534). To what court error issues.

Distinguished in Kentucky v. Powers, 139 Fed. 489, upholding right of removal of criminal case to federal court where defendant denied equal protection of laws in selection of jury.

3 Wall. 451-460, 18 L. 197, THE SALLY MAGEE.

Syl. 2 (VI, 534). Bill of lading vests title in consignee.

See 105 Am. St. Rep. 355, note.

3 Wall. 460-478, 18 L. 265, SIMPSON v. DALL.

Syl. 2 (VI, 535). Secondary evidence—Exhaustion of means of discovery.

Approved in Brown v. Harkins, 131 Fed. 66, 65 C. C. A. 301, refusing secondary evidence of contents of books of distiller where books had been taken from him by collector and removed to latter's office, and thence to revenue agent's office, and proof made of search in latter's office but not in collector's; Avery v. Stewart, 134 N. C. 295, 296, 46 S. E. 522, 523, testimony of witness that he received certain letter, and that it was lost and he could not find it, does not warrant admission of secondary evidence.

3 Wall. 478-494, 18 L. 88, BEARD v. FEDERY.

Syl. 1 (VI, 536). Land patent—Relation back.

Approved in United States v. Anderson, 194 U. S. 399, 48 L. 1039, 24 Sup. Ct. 716, government cannot retain, as against grantees of indemnity railroad lands, sum collected for removal of stone and timber during period between selection of lands and approval of selection; Peyton v. Desmond, 129 Fed. 12, 63 C. C. A. 651, home-

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stead patentee may recover value of timber wrongfully cut and removed from land after initiation of claim and prior to issuance of patent.

3 Wall. 495-514, 18 L. 207, BANK FOR SAVINGS v. THE COLLECTOR.

Syl. 2 (VI, 538). Bank defined.

Approved in Hamilton Nat. Bank v. American Loan & T. Co., 66 Neb. 72, 92 N. W. 191, corporation organized to negotiate loans, purchase and sell notes and mortgages and receive deposits and execute trusts, is bank whose stockholders are liable under Const., art. 11b, § 7.

3 Wall. 564-566, 18 L. 168, THE DUORO.

Syl. 1 (VI, 541). Frivolous appeals condemned.

Approved in McCourt v. Singers-Bigger, 150 Fed. 104, decree adjudging subsequent issues not determined by earlier decree which was basis of appellate mandate is appealable.

3 Wall. 573-603, 18 L. 229, VAN ALLEN v. THE ASSESSORS.

Syl. 1 (VI, 541). Uniformity—State tax on national bank shares.

Approved in First National Bank v. Douglas Co., 124 Wis. 21, 102 N. W. 317, real estate belonging to national bank acquired with and constituting part of capital stock is exempt from taxation.

Syl. 2 (VI, 542). State tax on national bank shares.

Approved in People's Sav. Bank v. Layman, 134 Fed. 638, under Code Iowa, § 1322, savings bank not entitled to deduction of amount of government bonds held by it, in making assessment; Consolidated Nat. Bank v. Pima Co., 5 Ariz. 150, 48 Pac. 295, upholding Acts Ariz., April 13, 1893, taxing shares of stock in national bank; First National Bank v. City of Independence, 123 Iowa, 484, 99 N. W. 143, in estimating value of stock in bank for purpose of taxation, value of government bonds owned by bank may be considered.

Syl. 3 (VI, 544). Tax on national bank shares not on capital.

Approved in Delaware etc. R. R. Co. v. Pennsylvania, 198 U. S. 354, 49 L. 1082, 25 Sup. Ct. 669, value of coal mined by domestic corporation in state but situated elsewhere cannot be considered in appraising capital stock for taxation; Wilkens Co. v. Baltimore, 103 Md. 313, 63 Atl. 565, under Gen. Laws 1904, art. 81, §§ 2, 4, where principal place of business of foreign corporation was within state, fact that four-fifths of preferred stock was held by residents and taxable did not exempt corporation's tangible property within state; Stroh v. Detroit, 131 Mich. 116, 90 N. W. 1032, under Pub. Acts 1893, No. 206, § 8, shares in foreign corporations are exempt from taxation when its property is taxable in state; Old National

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Bank v. State, 58 W. Va. 561, 562, 52 S. E. 495, government bonds held by national bank as part of its capital are not taxable by county; First National Bank v. Douglas Co., 124 Wis. 22, 102 N. W. 318, real estate belonging to national bank acquired with and constituting part of capital stock is exempt from taxation; dissenting opinion in Consolidated Nat. Bank v. Pima Co., 5 Ariz. 151, 48 Pac. 295, majority upholding Acts Ariz., April 13, 1893, taxing shares of stock in national bank.

3 Wall. 636-642, 18 L. 262, YOUNG v. GUILBEAU.

Syl. 5 (VI, 550). Delivery of deed essential to transfer.

Approved in Brumby v. Jones, 141 Fed. 323, bankruptcy court cannot entertain plenary suit by third person to cancel satisfaction of mortgage and declare trust in bankrupt's mortgaged property, which is not in possession of his trustee.

3 Wall. 654-672, 18 L. 79, ROGERS v. BURLINGTON.

Syl. 1 (VI, 550). Bill of exceptions unnecessary to review demurrer.

Approved in Nichols v. Board of Commrs. of Weston Co., 13 Wyo. 8, 76 Pac. 682, final judgment unsupported by pleadings or findings may be vacated on error, on record proper without bill of exceptions.

Syl. 3 (VI, 551). Municipalities controllable by legislature.

See 97 Am. St. Rep. 349, note.

3 Wall. 688-703, 17 L. 268, UNITED STATES v. DASHIEL.

Syl. 2 (VI, 555). Appeal does not affect property executed on.

Approved in Thalheim v. Camp Phosphate Co., 48 Fla. 195, 37 So. 525, Rev. St. 1892, § 1272, does not restore personalty previously levied on to possession of execution defendant, nor impair lien of execution levy.

3 Wall. 713-743, 18 L. 96, GILMAN v. PHILADELPHIA.

Syl. 2 (VI, 556). Congressional control of navigable waters.

Approved in United States v. Union Bridge Co., 143 Fed. 386, upholding power of government to compel alteration of bridge over navigable stream where it obstructs navigation.

Syl. 6 (VI, 558). Exclusiveness of congressional commerce regulations.

Approved in United States v. Union Bridge Co., 143 Fed. 391, 392, upholding power of government to compel alteration of bridge over navigable stream where it obstructs navigation.

Syl. 9 (VI, 562). State's concurrent exercise of power.

Approved in Manigault v. Springs, 199 U. S. 478, 50 L. 278, 26 Sup. Ct. 127, upholding right of state to build dam across former

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navigable stream to promote general health; Kansas City etc. R. R. Co. v. Wiygul, 82 Miss. 231, 33 So. 967, 61 L. R. A. 578, in absence of congressional regulation state may authorize erection of bridge across navigable stream.

Syl. 10 (VI, 562). Police power—Regulation of liquor and quarantine.

Approved in Chicago etc. Ry. Co. v. Illinois, 200 U. S. 592, 50 L. 609, 26 Sup. Ct. 341, Illinois drainage commissioners may impose on railroad entire cost of removing and rebuilding bridge made necessary by deepening of channel.

IV WALLACE.

4 Wall. 2-142, 18 L. 281, EX PARTE MILLIGAN.

Syl. 2 (VI, 566). Habeas corpus as matter of right.

Approved in In re Burkell, 2 Alaska, 110, habeas corpus does not lie where prisoner confined under sentence at hard labor when statute does not authorize hard labor.

Syl. 11 (VI, 569). When martial law justified.

See 98 Am. St. Rep. 774, note.

Syl. 12 (VI, 569). Court-martial—Trial of nonmilitary person.

See 111 Am St. Rep. 936, note.

4 Wall. 158-163, 18 L. 354, UNITED STATES v. HOFFMAN.

Syl. 1 (VI, 572). Nature of writ of prohibition.

See 111 Am. St. Rep. 969, note.

Syl. 4 (VI, 573). Prohibition not issuable when.

Approved in State v. Ryan, 180 Mo. 52, 79 S. W. 435, where state arbitration board has applied for citation in contempt proceedings for failure to testify before board, prohibition to restrain circuit judge before issuance of citation is premature.

4 Wall. 177-181, 18 L. 381, RAILROAD CO. v. ROCK.

Syl. 3 (VI, 576). Federal question—Impairment of contracts.

Cited in State ex rel. Louisiana Imp. Co. v. Board of Assessors, 111 La. 1001, 36 So. 98, arguendo.

4 Wall. 182-185, 18 L. 319, UNITED STATES v. DASHIEL.

Syl. 1 (VI, 577). Officer's liability for loss by robbery.

Approved in Van Trees v. Territory, 7 Okl. 363, 54 Pac. 498, fact that county moneys deposited in solvent bank which afterward failed is no defense to action on treasurer's bond.

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4 Wall. 186, 187, 18 L. 321, UNITED STATES v. ALLSBURY.

Syl. 1 (VI, 579). Surety's liability not greater than principal's.

Approved in Hardaway v. National Surety Co., 150 Fed. 482, following rule.

4 Wall. 187-189, 18 L. 333, LEFTWICH v. LECANU.

Syl. 1 (VI, 579). Bill of exceptions—Exhibits.

Approved in Tracy v. Carver Coal Co., 57 W. Va. 590, 50 S. E. 826, applying rule to evidence taken down and transcribed by shorthand reporter.

4 Wall. 189-196, 18 L. 416, MAYOR v. SHEFFIELD.

Syl. 2 (VI, 580). Municipality's liability for defective streets.

Approved in City of Guthrie v. Swan, 5 Okl. 783, 51 Pac. 564, following rule.

4 Wall. 196-204, 18 L. 322, CHRISTY v. PRIDGEON.

Syl. 2 (VI, 582). Following state decisions.

Approved in Reed v. Munn, 148 Fed. 749, where claimants of conflicting mining locations conveyed interests to trustee to adjust controversy, equitable interest of beneficial owners under trust agreement was seizable under execution; Whitman v. Atkinson, 130 Fed. 761, 65 C. C. A. 185, applying rule to action against stockholders on statutory liability under Kan. Gen. St. 1889, c. 23, §§ 32, 44; York v. Washburn, 129 Fed. 567, 569, 64 C. C. A. 132, oral contract for letting of realty located in Minnesota for more than one year, not complying with statute of frauds of such state. is not void and lessee cannot recover earnest-money.

4 Wall. 210-220, 18 L. 339, WITHERSPOON v. DUNCAN.

Syl. 1 (VI, 582). Following state construction of tax laws.

Approved in Hertzler v. Freeman, 12 N. D. 189, 96 N. W. 295, assessment of realty in name of another than owner does not render tax void.

Syl. 3 (VI, 583). When public land becomes taxable.

Approved in United States v. Detroit Timber etc. Co., 200 U. S. 338, 50 L. 506, 26 Sup. Ct. 282, bona fide purchaser of standing timber from holder of receiver's final certificate of purchase, on avoidance, for entryman's fraud, of subsequent patents, need not account to government for timber cut; Hodges v. Colcord, 193 U. S. 196, 48 L. 679, 24 Sup. Ct. 433, one who by contract induced relinquishment in local land office of homestead entry made by disqualified entryman has right of entry though settlement made between homestead entry and initiation of contest; Oklahoma City v. McMaster, 12 Okl. 588, 73 Pac. 1017, rights of one making homestead entry cannot be taken away for public use except by com-

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pensation and due process of law; McMichael v. Murphy, 12 Okl. 160, 161, 70 Pac. 191, and Holt v. Murphy, 15 Okl. 18, 79 Pac. 267, both holding homestead application to enter land already covered by subsisting homestead entry confers no rights on applicant; Flanagan v. Forsythe, 6 Okl. 235, 50 Pac. 155, after final proof made and patent for homestead issued, homestead not exempt from debts; Tegarden v. Le Marchel, 129 Fed. 489, arguendo.

4 Wall. 232-237, 18 L. 303, HUGHES v. UNITED STATES.

Syl. 1 (VI, 587). Land patents canceled for mistake.

Approved in Southern Pac. R. R. Co. v. United States, 200 U. S. 351, 50 L. 511, 26 Sup. Ct. 296, upholding equity jurisdiction over bill by government to cancel patents and for discovery of sales to bona fide purchasers and confirmation of their titles.

Syl. 4 (VI, 589). Requisites of judgment as res adjudicata.

Approved in United States Fastener Co. v. Bradley, 143 Fed. 530, 531, applying rule in suit for infringement of patent; Russell v. Russell, 134 Fed. 841, 67 C. C. A. 436, question expressly determined by equity decree affirmed on appeal is res adjudicata, though such question not considered by appellate court; Southern Pac. R. R. Co. v. United States, 133 Fed. 661, 66 C. C. A. 581, judgment of dismissal without prejudice in suit by government against railroad to cancel patents is not bar to subsequent suit against company and purchasers from it for adjudication of title; Geiser Mfg. Co. v. Berry, 12 Okl. 194, 70 Pac. 205, holding right of possession of property involved in replevin not res adjudicata; Brakefield v. Lucas, 10 Okl. 587, 64 Pac. 11, judgment that one of defendants should recover costs and that there was no joint liability on part of codefendants, is not res adjudicata against first defendant in suit for conversion of subject matter; Harris v. Columbia etc. Co., 114 Tenn. 339, 85 S. W. 900, adjudication in action on contract that action not maintainable because one of plaintiffs was foreign corporation which had not complied with law is not res adjudicata.

4 Wall. 244-259, 18 L. 344, NEW YORK v. THE TAX COMMISSIONERS.

Syl. 1 (VI, 591). Uniform state taxation of national banks.

Approved in New York v. State Board of Tax Commrs., 199 U. S. 42, 50 L. 77, 105 Am. St. Rep. 702, 25 Sup. Ct. 715, special franchise tax imposed by N. Y. Laws 1899, c. 712, does not impair obligation of grant to operate street railway in New York in payment of annual percentage of earnings; Consolidated Nat. Bank v. Pima Co., 5 Ariz. 145, 48 Pac. 293, evidence of failure of state to tax shares in building and loan society is immaterial in determining validity of state tax on national bank shares; Commonwealth v. Citizens' Nat. Bank, 117 Ky. 955, 80 S. W. 160, upholding Acts 1900, p. 65, c. 23,

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providing that national bank is liable for taxes on its shares of capital stock.

Syl. 2 (VI, 591). State tax on national bank shares—Investments.

Approved in Consolidated Nat. Bank v. Pima Co., 5 Ariz. 150, 48 Pac. 295, upholding Act Ariz., April 13, 1893, taxing shares of national banks; Wilkens Co. v. Baltimore, 103 Md. 313, 63 Atl. 565, where principal place of business of foreign corporation was within state, fact that four-fifths of preferred stock held by residents did not exempt corporation's tangible property within state from taxation; State v. Shryack, 179 Mo. 438, 78 S. W. 811, under Laws 1895, p. 242, bank's realty assessed against corporation and shares of stock assessed in names of shareholders; People v. Reardon, 184 N. Y. 451, 112 Am. St. Rep. 641, 77 N. E. 976, upholding Laws 1905, pp. 474, 477, taxing transfers of stock in foreign and domestic corporations.

4 Wall. 277-332, 18 L. 356, CUMMINGS v. MISSOURI.

Syl. 5 (VI, 597). Ex post facto law defined.

Approved in State v. Rooney, 12 N. D. 151, 95 N. W. 515, upholding Laws 1903, c. 99, substituting penitentiary for county jail as place of confinement pending execution, as applied to one convicted prior to its passage; dissenting opinion in State v. Barrett, 138 N. C. 654, 50 S. E. 514, majority upholding Laws N. C. 1903, p. 749, c. 434, prohibiting sale of liquor and making keeping of liquor in more than quart quantities presumptive evidence of keeping it for sale.

4 Wall. 333-399, 18 L. 366, EX PARTE GARLAND.

Syl. 2 (VI, 600). Ex post facto laws.

Approved in State v. Rooney, 12 N. D. 151, 95 N. W. 515, upholding Laws 1903, c. 99, substituting penitentiary for county jail as place of confinement pending execution, as applied to one convicted prior to its passage.

Syl. 3 (VI, 601). Admission of attorneys in judicial act.

Approved in In re Branch, 70 N. J. L. 548, 57 Atl. 437, holding void act of 1903, requiring supreme court to recommend law clerks for admission without examination; State v. Mosher, 128 Iowa, 87, 103 N. W. 107, arguendo.

Syl. 6 (VI, 603). Pardoning power not subject to legislative control.

Approved in Territory v. Richardson, 9 Okl. 586, 60 Pac. 246, 49 L. R. A. 440, where pardon granted, proceedings against defendant must be dismissed.

Syl. 8 (VI, 605). Pardoned person not excluded from privileges.

Approved in Fite v. State, 114 Tenn. 656, 88 S. W. 943, upholding statute authorizing commutation of sentence for good behavior and defining credits allowed.

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4 Wall. 409-411, 18 L. 432, GILMAN v. LOCKWOOD.

Syl. 1 (VI, 607). Insolvency law—Impairment of contracts.

Approved in In re Salmon, 143 Fed. 405, Rev. St. Mo. 1899, §§ 1305, 1306, making it duty of Secretary of State to take charge of bank whose capital impaired and providing for appointment of receiver to wind up affairs, is insolvency law, suspended by bankruptcy act.

4 Wall. 411-431, 18 L. 397, THE MOSES TAYLOR.

Syl. 7 (VI, 611). Admiralty—Exclusive federal jurisdiction.

Approved in The San Rafael, 141 Fed. 280, admiralty jurisdiction to enforce lien for maritime tort not affected by state statute limiting time within which liens on vessels given thereby must be enforced; Fredericks v. Jas. Rees & Sons Co., 135 Fed. 731, 68 C. C. A. 368, lien to be enforced by proceeding in rem, given by state for repairs or supplies to vessel in home port, is enforceable in admiralty; John Meunier Gun Co. v. Lehigh Valley etc. Co., 123 Wis. 148, 101 N. W. 388, action against carrier for damages to goods shipped is not maritime, though answer alleges goods shipped by water and were damaged by perils of navigation; Arnold v. Eastin, 116 Ky. 699, 76 S. W. 856, arguendo.

4 Wall. 435-447, 18 L. 419, ROCK ISLAND COUNTY SUPERVISORS v. UNITED STATES.

Syl. 3 (VI, 616). Mandamus to compel mandatory tax.

Approved in United States v. Cornell Steamboat Co., 202 U. S. 192, 50 L. 991, 26 Sup. Ct. 648, upholding 137 Fed. 458, 69 C. C. A. 603, holding under Rev. St., § 2984, Secretary of Treasury cannot arbitrarily refuse to allow refund of duties therein provided for; Corliss v. Highland Park, 132 Mich. 161, 95 N. W. 416, where village contracted for construction of sewers and assessment therefor was invalid, village must make new assessment not exceeding five per cent of valuation of sewer district and assess balance to village at large; Jones v. Madison Co. Commrs., 137 N. C. 592, 50 S. E. 295 (on rehearing), Laws 1903, p. 490, c. 289, authorizing county commissioners to issue funding bonds, is mandatory; Jordan v. Davis, 10 Okl. 332, 61 Pac. 1063, St. Okl. 1893, § 5820, relating to teacher's certificates, imposes on county superintendent imperative duty to indorse proper certificates when presented to him; Theis v. Commrs. of Washita County, 9 Okl. 653, 60 Pac. 508, where county commissioners have issued bridge warrants in accordance with statute, and have failed to levy tax to liquidate warrants, mandamus and not action for money judgment is remedy of warrant-holders; dissenting opinion in Battery Park Bank v. Madison Co. Commrs., 135 N. C. 240, 47 S. E. 1018, majority holding Laws 1903, p. 490, c. 289, authorizing county commissioners to issue funding bonds, is not mandatory.

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4 Wall. 447-458, 18 L. 377, DAVIDSON v. LANIER.

Syl. 8 (VI, 621). Delivery of note signed in blank.

Approved in Theard v. Gueringer, 115 La. 246, 38 So. 981, where note for $2,600 executed by maker to own order and indorsed by her in blank left it with notary, who sold it before maturity, telling buyer it had been reduced $600, purchaser has good title to extent of price paid.

4 Wall. 459-463, 18 L. 433, BRADLEY v. PEOPLE.

Syl. 1 (VI, 621.) Uniformity—State tax on national bank shares.

Approved in Old National Bank v. State, 58 W. Va. 562, 52 S. E. 495, government bonds held by bank as part of capital not taxable by county; dissenting opinion in Consolidated Nat. Bank v. Pima Co., 5 Ariz. 151, 48 Pac. 295, majority upholding Act Ariz., April 13, 1893, relating to taxation of shares of national banks.

Distinguished in Consolidated Nat. Bank v. Pima Co., 5 Ariz. 150, 48 Pac. 295, upholding Act Ariz., April 13, 1893, relating to taxation of national bank shares.

4 Wall. 463-474, 18 L. 423, THOMPSON v. BOWIE.

Syl. 1 (VI, 622.) Evidence must be relevant to issues.

Approved in Dunn v. State, 162 Ind. 182, 70 N. E. 523, in prosecution for murder, where accused in cross-examination has denied statement admitting prior adultery, rebuttal evidence of such statement is inadmissible.

Distinguished in Bryan v. United States, 133 Fed. 501, 66 C. C. A. 369, where indictment in one count alleged passing of counterfeit 5-cent pieces, and, in another, charged possession of molds for 25-cent pieces, dismissal of latter count does not warrant withdrawal of evidence introduced thereunder, where it shows intent under former.

4 Wall. 475-501, 18 L. 437, MISSISSIPPI v. JOHNSON.

Syl. 1 (VI, 623). Mandamus—What is ministerial duty.

Approved in State v. Frazier, 114 Tenn. 520, 86 S. W. 320, denying mandamus to compel board of election inspectors to compare vote and declare result of election; State v. Brooks, 14 Wyo. 411, 84 Pac. 490, upholding supreme court's jurisdiction to issue mandamus to compel governor to grant certificate of election to state officer.

Syl. 4 (VI, 624). Federal jurisdiction to enjoin executive.

Approved in Anthony v. Burrow, 129 Fed. 790, federal equity court has no jurisdiction to order state officer to certify nomination of certain person as candidate for Congress.

4 Wall. 513-521, 18 L. 435, PURCELL v. MINER.

Syl. 1 (VI, 628). Exchange of lands—Statute of frauds.

See 102 Am. St. Rep. 232, note.

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Syl. 3 (VI, 629). Specific performance of oral contract for land.

Approved in Kane v. Luckman, 131 Fed. 612, refusing specific performance of oral contract for purchase of cows in exchange for farm, difference payable in cash.

(VI, 628). Miscellaneous. Cited in State ex rel. Louisiana Imp. Co. v. Board of Assessors, 111 La. 1001, 36 So. 98.

4 Wall. 522-535, 18 L. 335, COMMISSIONER OF PATENTS v. WITELEY.

Syl. 2 (VI, 631). Mandamus, when lies.

Cited in 98 Am. St. Rep. 869, 874, note.

4 Wall. 535-555, 18 L. 403, VON HOFFMAN v. CITY OF QUINCY.

Syl. 3 (VI, 632). Statute declared void only in clear case.

Approved in Board of Commrs. v. Tollman, 145 Fed. 766, upholding Laws N. C. 1885, p. 439, c. 233, incorporating railroad and authorizing issuance of county aid bonds.

Syl. 5 (VI, 633). Subsisting laws enter into contract.

Approved in In re Thompson Milling Co., 144 Fed. 316, attorney's fee provided for in note is not "fixed liability," provable against bankruptcy estate, where petition filed before note matured; Welsh v. Cross, 146 Cal. 624, 106 Am. St. Rep. 63, 81 Pac. 230, amendment of 1897 to Code Civ. Proc., § 702, extending time of redemption, does not apply to judgments existing at time of its passage.

Syl. 9 (VI, 636). Obligation of contracts—Change of remedy.

Approved in Graham v. Folsom, 200 U. S. 252, 50 L. 468, 26 Sup. Ct. 245, granting mandamus to compel county authorities to levy tax to pay judgment on township bonds, and affirming Ex parte Folsom, 131 Fed. 504, construing S. C. constitutional amendment relating to incorporation of townships as impairing obligation of railroad aid bonds; Gamble v. Rural etc. School Dist., 146 Fed. 118, in spite of Iowa Code, 1897, § 3070, amending prior statute, and limiting recovery on negotiable paper procured by fraud, purchaser with knowledge from innocent holder of negotiable school bond fraudulently issued prior to amendment could recover full amount; Harrison v. Remington Paper Co., 140 Fed. 392, Kan. Laws 1898, c. 10, p. 27, substituting suit in equity by receiver of corporation to collect stockholder's liability is void as against contracts made prior to its passage; Myers v. Knickerbocker Trust Co., 139 Fed. 116, holding void Maryland Act of 1904, substituting for existing remedy to enforce stockholder's liability suit in equity on behalf of all creditors, as against prior creditors who had brought suit under prior act; Folsom v. Greenwood Co., 137 Fed. 450, 69 C. C. A. 473, where statute enabled township to issue aid bonds and authorized officers to collect taxes provided for in statute, state could not deprive bondholders of remedy thereby provided; Boise Irr. etc. Co. v. Stewart, 10 Idaho, 60, 77 Pac. 32, upholding Laws 1903, p. 223, providing that certain state-

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ments and maps referred to in § 37 thereof should be evidence on trial of action to establish water rights; Miners' etc. Bank v. Snyder, 100 Md. 65, 108 Am. St. Rep. 390, 59 Atl. 710, 68 L. R. A. 312, upholding Acts 1904, p. 597, c. 337, substituting bill in equity on behalf of all creditors against all stockholders, as applied to creditor who has sued stockholder under prior law, but has not obtained judgment.

Syl. 10 (VI, 637). Obligation of contracts—Change of tax.

Approved in City of Ft. Madison v. Ft. Madison etc. Co., 134 Fed. 216, 67 C. C. A. 142, Code Iowa, 1897, § 1305, providing for assessment of property at quarter of value is invalid in so far as it affects ability of city to pay water rents under contract made when statute provided for assessments at actual value.

4 Wall. 555-572, 18 L. 451, THE HINE v. TREVORE.

Syl. 2 (VI, 641). Admiralty jurisdiction—State remedies.

Approved in Arnold v. Eastin, 116 Ky. 699, 76 S. W. 856, arguendo.

Denied in The Winnebago, 141 Fed. 948, upholding Mich. Comp. Law, c. 298, giving lien to persons furnishing labor and material in construction of vessels and providing for their enforcement in state courts.

4 Wall. 584-598, 18 L. 410, SPARROW v. STRONG.

Syl. 1 (VI, 647). Supreme court—Territorial grant of new trial.

Approved in Copper King v. Johnson, 195 U. S. 627, 49 L. 351, 25 Sup. Ct. 793, following rule.

4 Wall. 605-617, 18 L. 447, PEARSON v. DUANE.

Syl. 1 (VI, 649.) Common carriers must carry all.

See 107 Am. St. Rep. 299, note.

Syl. 2 (VI, 649). Carriers—Expulsion of passenger.

Approved in Owens v. Macon etc. Ry. Co., 119 Ga. 233, 46 S. E. 88, upholding refusal of carrier to carry violent lunatic when carrier had no notice of intention to ship lunatic. See 107 Am. St. Rep. 303, note.

4 Wall. 650-657, 18 L. 328, RAILROAD CO. v. LINDSAY.

Syl. 4 (VI, 652). Variance between petition and findings.

Approved in Black v. Teeter, 1 Alaska, 564, where in ejectment evidence was offered by both parties of second location by plaintiff, which was not specially pleaded, instruction submitting last location not error.

4 Wall. 657-679, 18 L. 427, ROBBINS v. CHICAGO.

Syl. 1 (VI, 652). City's liability for defective streets.

Approved in United States v. Port of Portland, 147 Fed. 868, Port of Portland is liable in damages for collision caused by negligence of its employees in charge of one of its tugs.

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Syl. 2 (VI, 654). Conclusiveness of judgment against city on third persons.

Approved in Saxlehner v. Eisner, 140 Fed. 941, executive officers of corporation are jointly and severally liable with it for infringement of patent, and judgment is conclusive thereon as to damages; Graves v. City etc. Tel. Assn., 132 Fed. 388, holding telephone and traction companies jointly liable for personal injuries caused by former leaving latter's feed wire in contact with one of its poles. See 112 Am. St. Rep. 31, note.

Distinguished in Chesapeake etc. Towing Co. v. Western Assurance Co., 99 Md. 442, 58 Atl. 17, where, on loss of cargo, from plaintiff's scow en route to steamer, in suit by assignee of owner of goods against owner of steamer, scow found unseaworthy, plaintiff not estopped by such finding in action against insurer of cargo.

Syl. 3 (VI, 656). Liability of street contractor for injuries.

Approved in Thomas v. Harrington, 72 N. H. 47, 54 Atl. 287, 65 L. R. A. 742, owner of house contracting with one to run pipe from road is liable for injuries to one driving into unguarded trench.

Syl. 7 (VI, 658). Conclusiveness of judgment—Parties to suit.

Approved in Australian Knitting Co. v. Gormly, 138 Fed. 97, 98, manufacturer of infringing article assisting purchaser in defending infringement suit, not party to suit, not concluded by decree adjudging validity of patent.

Syl. 10 (VI, 658). Liability of employer for acts of contractor.

Approved in Hoff v. Shockley, 122 Iowa, 728, 101 Am. St. Rep. 289, 98 N. W. 576, 64 L. R. A. 538, property owner contracting with independent contractor to build house not liable for injury to passer-by on street caused by latter's failure to guard and light sand pile in front of premises; Geller v. Briscoe Mfg. Co., 136 Mich. 332, 99 N. W. 281, employer directing foreman to clean water-coolers with potash is liable for injuries, where he did not give instructions to adopt precautionary measures to prevent injury; Loth v. Columbia Theater Co., 197 Mo. 354, 94 S. W. 854, theater company employing electric company to attend to sign is liable for injuries caused by falling of sign; Cameron Mill etc. Co. v. Anderson, 34 Tex. Civ. 107, 78 S. W. 9, owner liable for injuries to one falling into unguarded excavation in street though contractor had charge of work.

4 Wall. 680-684, 18 L. 311, UNITED STATES v. McMASTERS.

Syl. 2 (VI, 659). Objections to evidence must specify.

Approved in Graves v. Bonness, 97 Minn. 281, 107 N. W. 164, following rule.

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5 Wall. 74-80, 18 L. 580, WATSON v. SUTHERLAND.

Syl. 1 (VI, 662). Equity jurisdiction—Adequacy of law remedy.

Approved in General Elec. Co. v. Westinghouse Elec. & Mfg. Co., 144 Fed. 466, where contract for sale of goods provided that violator should pay as liquidated damages fifty per cent of sale price of goods, injunction against violation of contract refused; Big Six etc. Co. v. Mitchell, 138 Fed. 286, upholding jurisdiction over bill by landlord to cancel mining lease as cloud on title, to establish his right of possession in premises and to enjoin lessee from mining because of lessee's breach of lease; American Lighting Co. v. Public Service Corp., 134 Fed. 131, one cannot be punished for contempt for disregarding order restraining violation of contract for street lighting; United Cigarette etc. Co. v. Wright, 132 Fed. 197, upholding jurisdiction over bill for accounting from defendant as agent with reference to separate transactions; American Plate Glass Co. v. Vicoson, 34 Ind. App. 652, 73 N. E. 628, refusing to enjoin obstruction of stream where complainants operated quarry and dam backed up water on premises, but character of land overflowed not alleged; Bluffton v. Miller, 33 Ind. App. 523, 70 N. E. 990, property owner affected by street improvement may enjoin city from carrying out contract which is beyond scope of its power; Stauffer v. Cincinnati etc. R. R. Co., 33 Ind. App. 358, 70 N. E. 543, enjoining removal of buildings from land which complainant had acquired by condemnation; Barnes v. Newton, 5 Okl. 435, 48 Pac. 193, successful party in contest before land department may enjoin adversary from interfering with possession.

Syl. 3 (VI, 666). Injunction against wrongful execution.

Distinguished in dissenting opinion in Barnes v. Newton, 5 Okl. 446, 49 Pac. 1076, majority holding successful party in land contest before land department may enjoin adversary from interfering with his possession.

5 Wall. 81-87, 18 L. 542, PARMELEE v. SIMPSON.

Syl. 1 (VI, 666). Nothing passes till delivery of deed.

Approved in Brumby v. Jones, 141 Fed. 323, applying rule where mortgagor made mortgage to himself as executor and recorded it.

Syl. 4 (VI, 667). Ratification of imperfect delivery of deed.

Approved in Merchants' Banking Co. v. Cargo of the Afton, 134 Fed. 730, 67 C. C. A. 618, applying rule where owners of mortgaged ship chartered her under charter providing for advances and master obtained additional advances.

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5 Wall. 90-106, 18 L. 591, ILLINOIS ETC. RAILROAD CO. v. BARRON.

Syl. 2 (VI, 669). Action by next of kin for wrongful death.

Approved in McCabe v. Narragansett Elec. etc. Co., 27 R. I. 277, 61 Atl. 669, loss of parental care of deceased father not considered in action for wrongful death under Gen. Laws 1896, c. 233, § 14.

Syl. 3 (VI, 671). Measure of damages for death—Anguish.

Approved in Denver R. R. Co. v. Gunning, 33 Colo. 288, 80 Pac. 729, upholding verdict for $4,000 for death of twenty-three year old husband, whose earning capacity was $400 per annum; Breen v. St. Louis Transit Co., 102 Mo. App. 489, 77 S. W. 81, physical and mental suffering caused by wrongful ejection of passenger are elements of damages.

(VI, 668.) Miscellaneous. Cited in Chicago etc. R. R. Co. v. Newell, 198 U. S. 579, 49 L. 1171, 25 Sup. Ct. 801.

5 Wall. 107-113, 18 L. 518, HADDEN v. THE COLLECTOR.

Syl. 1 (VI, 673). Statutory construction—Title.

Approved in Rider v. United States, 149 Fed. 166, under Comp. St. Supp. 1905, p. 365, jurisdiction over offenses on Arkansas Hot Springs reservation cannot be exercised by ordinary United States commissioner; Commonwealth v. Barney, 115 Ky. 478, 74 S. W. 182, upholding Laws 1902, p. 151, c. 66, prohibiting fraudulent disposition of property of another; State v. Patterson, 134 N. C. 614, 47 S. E. 809, where title of Laws 1903, p. 472, c. 349, prohibit manufacture, sale and importation of liquor in two named counties, and § 2 thereof makes place where delivery is made in state the place of sale, latter section applies to sale and delivery at any place in state; Choctaw etc. R. R. Co. v. Alexander, 7 Okl. 584, 595, 52 Pac. 945, 54 Pac. 422, upholding Stats. 1893, c. 37, regulating prairie fires; Territory v. Hopkins, 9 Okl. 154, 59 Pac. 982, construing Laws 1895, c. 7, relating to refunding bonds.

Syl. 2 (VI, 675). Statutory construction—Policy not considered.

Approved in Paterson v. Wilson, 11 Okl. 80, 65 Pac. 923, under act of Congress of March 2, 1889, relating to opening of Cherokee strip, one entering territory and remaining there between passage of act and opening of country is not entitled to homestead though he left prior to opening.

5 Wall. 119-170, 18 L. 502, STANLEY v. COLT.

Syl. 1 (VI, 677). Devises on condition and in trust distinguished.

Affirmed in Union Stockyards Co. v. Nashville Pack. Co., 140 Fed. 704, conveyance pursuant to contract whereby grantee agreed to build packing-house on land, not set aside where packing-house built but subsequently abandoned; Thornton v. Mayor etc. of Natchez, 129 Fed. 87, 63 C. C. A. 526, deed conveying land to city for burial

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ground without condition as to reversion does not require maintenance of burial ground perpetually irrespective of general welfare.

Syl. 2 (VI, 677). "Proviso" in deed not condition.

Approved in Bain v. Parker, 77 Ark. 171, 90 S. W. 1001, deed conveying land to railroad in consideration of building road to be completed by certain date not invalidated by failure to complete road by that date; Prince v. Barrow, 120 Ga. 819, 48 S. E. 413, construing bequest to wife on condition that she apply designated portion of income to own use and balance in certain other ways; MacKenzie v. Trustees of Presbytery of Jersey City, 67 N. J. Eq. 661, 61 Atl. 1031, 69 L. R. A. (N. S.) 227, construing deed to religious society on condition that society should always be known by certain name and that no instrumental music be used in worship.

Syl. 3 (VI, 678). Care of trust property by trustee.

Approved in In re Columbia Iron Wks., 142 Fed. 239, referee in bankruptcy cannot permit creditors by majority vote to select attorney for trustee.

5 Wall. 188-190, 18 L. 676, EX PARTE MILWAUKEE R. R. CO.

Syl. 3 (VI, 682). Supersedeas by supreme court.

Approved in Boston & M. R. Co. v. Gokey, 150 Fed. 687, where district court judgment affirmed by circuit court of appeals and mandate sent down, but defeated party gets certiorari from supreme court to review decision of latter court, district court will stay execution. See 98 Am. St. Rep. 897, note.

5 Wall. 208-211, 18 L. 595, SEAVER v. BIGELOWS.

Syl. 1 (VI, 685), Amount in dispute—Joint appeal.

Approved in Feely v. Bryan, 55 W. Va. 591, 47 S. E. 310, where several creditors attack mortgage as preference and judgment decrees out of property particular sums to the several creditors, sums cannot be added to give supreme court jurisdiction.

5 Wall. 268-290, 18 L. 572, CROXALL v. SHERERD.

Syl. 6 (VI, 691). Bona fide purchaser in possession.

Approved in Scott v. Mineral Dev. Co., 130 Fed. 501, 64 C. C. A. 659, continuation of possession of part of tract under deed describing land by metes and bounds for statutory period under claim to whole gives adverse title to whole against one out of possession.

Syl. 7 (VI, 692). Remainder not construed contingent, when.

Approved in Archer v. Jacobs, 125 Iowa, 475, 101 N. W. 198, devise to daughter for life, remainder to her children, but if she die without children, then to testator's son or his children, gave daughter life estate, and her children in being took vested remainder; Curtis v. Zutavern, 67 Neb. 194, 93 N. W. 405, quitclaim deed of owner passes reversionary rights in same land which he holds subject to then existing dower estate.

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Syl. 10 (VI, 692). Adverse possession—Statute does not stop.

Approved in Linton v. Heye, 69 Neb. 455, 111 Am. St. Rep. 559, 95 N. W. 1041, statute of limitation respecting actions for recovery of realty does not deprive owner of property without due process. See 104 Am. St. Rep. 762, note.

5 Wall. 290-307, 18 L. 475, CHRISTMAS v. RUSSELL.

Syl. 1 (VI, 694). Prospective limitation statutes—Contract obligations.

Approved in Lamb v. Powder Riv. etc. Co., 132 Fed. 438, 67 L. R. A. 558, 65 C. C. A. 570, Colo. Act of 1899, amending Sess. Laws 1895, p. 239, c. 106, relating to limitation of actions on foreign judgments is void as against judgment rendered prior to passage of act; Terry v. Heisen, 115 La. 1083, 40 So. 466, upholding Const. 1898, art. 233, prescribing three-year limitation against actions to annul tax sales.

Syl. 3 (VI, 695). Act denying action on foreign judgment.

See 103 Am. St. Rep. 324, note.

Syl. 4 (VI, 695). Authenticated copies of judgments—Full faith.

Approved in dissenting opinion in Haddock v. Haddock, 201 U. S. 632, 50 L. 896, 26 Sup. Ct. 525, majority holding mere domicile in state of one spouse does not give state court jurisdiction to render divorce decree enforceable in all states against nonresident nonappearing defendant served by publication. See 103 Am. St. Rep. 319, note.

Syl. 8 (VI, 699). Inquiry as to jurisdiction of foreign judgments.

Approved in Lamb v. Powder Riv. etc. Co., 132 Fed. 441, 67 L. R. A. 558, 65 C. C. A. 570, Colo. Act of 1899, amending Sess. Laws 1895, p. 239, c. 106, relating to limitation of actions on foreign judgments, is void as against judgment rendered prior to its passage. See 103 Am. St. Rep. 308, note.

Syl. 9 (VI, 699). Fraud as defense to foreign judgment.

Approved in Jaster v. Currie, 198 U. S. 147, 49 L. 989, 25 Sup. Ct. 614, reversing 69 Neb. 5, 94 N. W. 996, and holding refusal of Nebraska court to permit action on Ohio judgment denies full faith and credit thereto, when based on alleged fraud in acquiring jurisdiction of defendant in Ohio suit by enticing him there by subpoena to take deposition; Shelby v. Creighton, 65 Neb. 495, 101 Am. St. Rep. 630, 91 N. W. 373, where administrator, who is also trustee of personalty under will, purchases part of personalty, and accounts to court for proceeds, order approving accounts and discharging him concludes cestui que trust; dissenting opinion in Haddock v. Haddock, 201 U. S. 627, 50 L. 893, 26 Sup. Ct. 525, majority holding mere domicile in state of one spouse does not give state court jurisdiction to render divorce decree enforceable in all states against nonresident

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nonappearing defendant served by publication. See 103 Am. St. Rep. 315, note.

Distinguished in Jaster v. Currie, 69 Neb. 5, 94 N. W. 996, in action on sister state judgment, defendant may show he was induced by plaintiff's fraudulent conduct to come within jurisdiction of court rendering judgment.

5 Wall. 307-318, 18 L. 599, GREEN v. VAN BUSKIRK.

Syl. 1 (VI, 702). Attachment—Law governing priorities.

Approved in Reed v. Munn, 148 Fed. 748, where owners of conflicting mining locations conveyed to trustee in order to adjust controversy, equitable interest of beneficial owners was subject to execution.

Syl. 2 (VI, 703). Law governing transfers of personalty.

Approved in Cooper v. Philadelphia Worsted Co. (Lees v. Harding etc. Co.), 68 N. J. Eq. 629, 60 Atl. 355, Pub. Laws 1889, p. 421, relating to conditional sales, does not apply to contracts made in another state with reference to chattels there situated, between resident of that state and resident of this, though goods brought here without former owner's consent; State v. Fidelity etc. Co., 35 Tex. Civ. 219, 80 S. W. 547, municipal securities deposited with state treasurer by foreign corporation, in order to do business here, are taxable in this state.

Distinguished in Studebaker Bros. Co. v. Mau, 14 Wyo. 78, 82 Pac. 5, where vendee of personalty under conditional sale removes property to another state without consent of vendor, latter may enforce lien in other state against subsequent purchasers without complying with registration laws of such state.

5 Wall. 318-325, 18 L. 489, DWYER v. DUNBAR.

Syl. 1 (VI, 705). Letter to third person inadmissible.

Approved in Inman Bros. v. Dudley etc. Lumber Co., 146 Fed. 455, letter from agent to principal reporting interview between agent and third person is inadmissible against such person.

5 Wall. 326-337, 18 L. 547, TOWNSEND v. GREELEY.

Syl. 5 (VI, 707). San Francisco pueblo lands held in trust.

Approved in Bowden v. San Francisco, 199 U. S. 600, 50 L. 328, 26 Sup. Ct. 748, following rule.

5 Wall. 413-419, 18 L. 657, EWING v. CITY OF ST. LOUIS.

Syl. 1 (VI, 712). Injunction against inferior boards—Certiorari.

Approved in Whitney v. Dick, 202 U. S. 138, 50 L. 965, 26 Sup. Ct. 584, supreme court will not issue certiorari as substitute for writ of error to review conviction in lower court where only question is whether federal courts have jurisdiction to punish offense.

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Syl. 2 (VI, 714). Federal relief no greater than state.

Approved in dissenting opinion in James v. Gray, 131 Fed. 415, 65 C. C. A. 385, majority holding loan by wife to husband from her separate estate is provable in bankruptcy, irrespective of its enforceability under state law.

5 Wall. 419-433, 18 L. 700, DE GROOT v. UNITED STATES.

Syl. 4 (VI, 715). Setoff against United States.

Approved in United States v. Gillies, 144 Fed. 991, following rule; United States v. Warren, 12 Okl. 364, 71 Pac. 689, applying rule in action by government against district court clerk for moneys erroneously paid as compensation.

Syl. 6 (VI, 716). Jurisdiction where government is defendant.

Approved in United States v. Foreman, 5 Okl. 257, 48 Pac. 98, one bringing suit against government in territorial district court to recover money paid for land on which entry canceled need not show surrender of duplicate receipt to Secretary of Interior and relinquishment of claim to land.

5 Wall. 462-475, 18 L. 497, LICENSE TAX CASES (UNITED STATES v. VASSAR).

Syl. 1 (VI, 719). Public policy, how determined.

Approved in Langdon v. Conlin, 67 Neb. 245, 108 Am. St. Rep. 644, 93 N. W. 390, holding void contract between attorney and layman by which latter is to get cases for former and assist in looking after witnesses for share in fees.

Syl. 4 (VI, 721). Direct and indirect taxes, how imposed.

Approved in McCrary v. United States, 195 U. S. 56, 49 L. 96, 24 Sup. Ct. 769, upholding act of 1886, as amended in 1902, imposing tax on artificially colored oleomargarine.

Syl. 5 (VI, 721). Federal license not permission in states.

Approved in In re Heff, 197 U. S. 505, 49 L. 855, 25 Sup. Ct. 506, sale of liquor within a state to Indian to whom allotment of land made under act of 1887, not punishable under 29 Stat. 506, c. 109; Hodge v. Muscatine Co., 196 U. S. 280, 104 Am. St. Rep. 314, 49 L. 481, 25 Sup. Ct. 237, Iowa Code, § 5007, making tax imposed thereby on business of selling cigarettes a lien on property where business is carried on, does not deny due process of law to owner of premises; Bishoff v. State, 43 Fla. 80, 30 So. 812, ordinance imposing license tax creates no contract right.

Syl. 6 (VI, 722). Licenses—Prohibition against doing business without.

Approved in Norfolk etc. Ry. Co. v. Suffolk, 103 Va. 501, 502, 49 S. E. 659, 660, Suffolk Charter, § 18, authorizes ordinance imposing

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license tax on railroad doing business in town, though road is amenable to fine under state law for failure to transact its business.

5 Wall. 475-481, 18 L. 608, PERVEAR v. THE COMMONWEALTH.

Syl. 1 (VI, 724). Federal license no defense to state prosecution.

Approved in Hodge v. Muscatine Co., 196 U. S. 280, 104 Am. St. Rep. 314, 49 L. 481, 25 Sup. Ct. 237, Iowa Code, § 5007, making tax imposed thereby on business of selling cigarettes a lien on premises where business is carried on, does not deny due process of law to owner of premises.

Syl. 2 (VI, 725). State tax on original packages.

Approved in Gulf etc. Ry. Co. v. State, 97 Tex. 286, 78 S. W. 499, where grain in cars bought by Texas company from Missouri firm which had grain coming from another state, and cars transshipped from one point in state to destination, shipment was under jurisdiction of state railroad commission.

Syl. 5 (VI, 726). Eighth amendment not applicable to states.

Approved in St. Louis etc. Ry. Co. v. Davis, 132 Fed. 632, federal court not given jurisdiction of suit to enjoin officers of state from contemplated act by allegation that it will violate fifth amendment; In re Briggs, 135 N. C. 121, 47 S. E. 404, upholding Code, § 1215, providing that no one can be excused from testifying as to gaming transactions, but that such evidence cannot be used against him.

5 WaH. 481-496, 18 L. 486, THE EDDY.

Syl. 4 (VI, 728). Actual delivery to consignee unnecessary.

Approved in The Titania, 131 Fed. 230, 65 C. C. A. 215, following rule; Rosenstein v. Vogemann, 184 N. Y. 330, 77 N. E. 626, where bill of lading provided for taking of goods immediately upon discharge, and that carrier's liability ceased on their leaving ship's tackle, carrier must give notice of time and place of arrival.

5 Wall. 497-509, 18 L. 520, HANSBROUGH v. PECK.

Syl. 2 (VI, 731). Sales—Retention of title as security.

Approved in Pierce v. Staub, 78 Conn. 466, 62 Atl. 763, 3 L. R. A. (N. S.) 785, where contract for sale on installment payments provided for possession by seller until full payment made, and buyer failed to meet installments, and seller sold goods to others, buyer could recover money paid.

Syl. 8 (VI, 731). Sales—Recovery of partial payments.

Approved in Pierce v. Staub, 78 Conn. 465, 62 Atl. 762, 3 L. R. A. (N. S.) 785, where contract for sale on installment payments provided for possession by seller until full payment made, and buyer failed to meet installments, and seller sold goods to others, buyer could recover money paid; Sipley v. Stickney, 190 Mass. 46, 76 N. E. 227, willful failure of former manager to return accurate account of expenses bars

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recovery for services, though stipulation for return of account is not of essence of contract.

5 Wall. 509-517, 18 L. 524, INSURANCE CO. v. CHASE.

Syl. 4 (VI, 734). Insurance—Specification of interest by owner.

Approved in American Cer. Co. v. Western Assur. Co., 148 Fed. 79, where policy insured A against loss on certain property, loss payable to B as his interest might appear, A was insured.

5 Wall. 541-545, 18 L. 540, MERCHANTS' INSURANCE CO. v. RITCHIE.

Syl. 1 (VI, 736). Suit between citizens of same state.

Approved in Thomas v. Board of Trustees, 195 U. S. 210, 49 L. 164, 25 Sup. Ct. 24, allegation that board of Ohio University trustees is citizen of state, and was created by state laws, is not sufficient averment that it is Ohio corporation.

Syl. 4 (VI, 737). Repeal of statute giving jurisdiction.

Approved in United States v. Sena, 12 N. M. 414, 78 Pac. 62, repeal of Laws of 1901 deprived supreme court of jurisdiction over criminal appeals not taken during term at which judgment rendered; Terry v. McClung, 104 Va. 601, 52 S. E. 356, construing Acts 1887-88, p. 68, c. 58, relating to jurisdiction in road cases.

Limited in Sena v. United States, 147 Fed. 488, where defendant in criminal case appealed from territorial district court within time and in accordance with existing statute, repeal of statute without saving clause before hearing of appeal did not deprive appellate court of jurisdiction.

5 Wall. 545-563, 18 L. 662, THE BIRD OF PARADISE.

Syl. 2 (VI, 739). Contract affirming freight lien.

Approved in Portland etc. Mills Co. v. Portland etc. S. S. Co., 145 Fed. 693, provision of bill of lading that carrier shall have lien on goods for all freights does not affect nature of lien; Michigan S. S. Co. v. Thornton, 136 Fed. 137, 69 C. C. A. 132, where charter-party provided that freight should be payable in cash on delivery of each cargo, and that ship should have lien on all cargo for freight, and consignee remitted to shipperfor cargo and freight, money impressed with trust for freight.

Syl. 3 (VI, 739). Lien for freight—Retention of goods.

Approved in Portland etc. Mills Co. v. Portland etc. S. S. Co., 145 Fed. 692, provision of bill of lading that carrier shall have lien on goods for all freights does not affect nature of lien.

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5 Wall. 563-566, 18 L. 692, UNITED STATES v. THE COMMISSIONER.

Syl. 1 (VI, 741). Mandamus—Quasi-judicial duties.

Approved in Hover v. People, 17 Colo. App. 392, 68 Pac. 685, mandamus does not lie to control determination of council as to sufficiency of funds to meet demands of city departments and amount of appropriation.

5 Wall. 566-574, 18 L. 511, GOODRICH v. CHICAGO.

Syl. 1 (VI, 742). State judgment on demurrer conclusive in admiralty.

Cited in Lockhart v. Leeds, 12 N. M. 167, 76 Pac. 315, and Board of County Commrs. v. Cross, 12 N. M. 76, 73 Pac. 616, both holding where, on sustaining demurrer, material issues had to be passed on, and plaintiff did not amend, but allowed entry of dismissal, judgment was res adjudicata; Ayres v. Cone, 138 Fed. 781, arguendo.

5 Wall. 580-599, 18 L. 550, PACKET CO. v. SICKLES.

Syl. 1 (VI, 744). Judgment as estoppel.

Approved in Schwarz v. Kennedy, 142 Fed. 1029, judgment for defendant for costs in replevin against two defendants, in which one of defendants was owner of undivided interest only, is not bar to action for conversion of same property; Georgia etc. Banking Co. v. Wright, 132 Fed. 917, decision of Georgia supreme court in suit between railroad and state that company's charter precluded greater tax than certain percentage of earnings, concludes state in subsequent suit, though it involves taxes for different year or under different statute; State v. McEldowney, 54 W. Va. 701, 47 S. E. 652, applying rule to decree in suit assailing validity of tax deed.

Syl. 2 (VI, 746). Judgment—Evidence aliunde to explain.

Approved in Fayerweather v. Ritch, 195 U. S. 306, 49 L. 213, 25 Sup. Ct. 58, declaring validity of releases to be res adjudicata; Holford v. James, 136 Fed. 555, 69 C. C. A. 263, construing docket entries as indicating that action proceeded to final judgment; Oster v. Broe, 161 Ind. 123, 64 N. E. 921, in suit to compel defendant to allow plaintiff to repair ditch across defendant's land, jurors in action by plaintiff against defendant for tearing up part of it cannot testify that they did not include cost of constructing ditch as part of recovery.

5 Wall. 660-663, 18 L. 678, MILWAUKEE R. R. CO. v. SOUTTER.

Syl. 1 (VI, 751). Confirmation of judicial sale is exercise of discretion.

Approved in The Sue, 137 Fed. 134, fact that first bidder has deposited amount of bid or incurred expense on account of supposed purchase not ground for objection to setting aside unconfirmed sale in admiralty on offer of increased bid.

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5 Wall. 663-680, 18 L. 704, THOMPSON v. RIGGS.

Syl. 4 (VI, 752). Bank deposits belong to bank.

Approved in Burton v. United States, 196 U. S. 302, 49 L. 488, 25 Sup. Ct. 243, indictment charging receipt and payment of checks in St. Louis not supported by evidence that checks drawn on St. Louis bank were received by defendant in Washington and deposited in local bank; Bank of Blackwell v. Dean, 9 Okl. 631, 60 Pac. 228, general depositor not entitled to priority over other general creditors on assignment of bank.

Syl. 6 (VI, 754). Usage implied in contract.

Approved in McSherry v. Blanchfield, 68 Kan. 312, 75 Pac. 122, where there is express contract for storage, evidence of existence of certain custom not admissible unless party presumed to know of it.

5 Wall. 681-689, 18 L. 689, WOLCOTT v. DES MOINES CO.

Syl. 4 (VI, 757). Land grants—Exception of reserved lands.

Approved in Northern Lumber Co. v. O'Brien, 139 Fed. 617, affirming 134 Fed. 304, holding where withdrawal of public lands along route of railroad is made by Land Department on filing general location, such withdrawal excepted lands from subsequent grant, though route subsequently changed.

5 Wall. 689-704, 18 L. 527, NASH v. TOWNE.

Syl. 3 (VI, 758). What variance deemed material.

Approved in Schiffer v. Anderson, 146 Fed. 459, where complaint alleged certain defendant was member of defendant's firm, and though other defendants had knowledge of facts, they did not deny allegation, but proved contrary under general denial, variance not material.

Syl. 5 (VI, 759). Contracts—Surrounding circumstances considered.

Approved in Cleveland-Cliffs Iron Co. v. East Itasca Mining Co., 146 Fed. 235, construing contract for assignment of mining leases on iron land on royalty; Vocalion Organ Co. v. Wright, 137 Fed. 316, construing contract between employer and its factory superintendent for interest in latter's future inventions of or improvements in piano players; United Rys. etc. Co. v. Wehr, 103 Md. 339, 63 Atl. 478, where defendant solicited of plaintiff bid for scrap iron in building, not including engines or piping, and plaintiff bid for all old material for sale in building, parol admissible to show whether structural iron included; Milske v. Steiner Mantel Co., 103 Md. 246, 63 Atl. 473, 5 L. R. A. (N. S.) 1105, where contractor agreed to put up building according to plans and give bond, and bond recited that neither principal nor surety liable for damage caused by act of God, contractor not relieved from damage to building caused by storm.

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Syl. 8 (VI, 760). Parol to exonerate agent contracting as principal.

Approved in Builders' Supply Co. v. North Augusta etc. Imp. Co., 71 S. C. 375, 51 S. E. 236, where owner of lot agreed with another to build house thereon and convey it free of liens, and permitted buyer to contract with builder, and took bond from builder and paid materialman, latter had lien on house and lot.

Syl. 9 (VI, 761). Parol to show contract made by agent.

Approved in In re Weisenberg, 131 Fed. 521, parol evidence is admissible to show that joint notes signed by members of bankrupt partnership are in fact firm debts.

5 Wall. 705-710, 18 L. 560, CITY OF GALENA v. AMY.

Syl. 1 (VI, 761). Tax levy to pay funded debt imperative.

Approved in United States v. Cornell Steamboat Co., 202 U. S. 192, 50 L. 991, 26 Sup. Ct. 648, affirming 137 Fed. 458, 69 C. C. A. 603, Secretary of Treasury cannot arbitrarily refuse to refund duties on damaged imports provided by Comp. St. 1901, p. 1958; Jones v. Commissioners, 137 N. C. 592, 50 S. E. 295 (on rehearing), holding Laws 1903, p. 490, c. 289, authorizing issuance of refunding bonds, is mandatory; dissenting opinion in Battery Park Bank v. Madison Co. Commrs., 135 N. C. 240, 47 S. E. 1018, majority holding Laws 1903, p. 490, c. 289, authorizing issuance of refunding bonds, is not mandatory.

Syl. 4 (VI, 763). Obligation of contracts—Repeal of law to pay debts.

Approved in City of Ft. Madison v. Ft. Madison etc. Co., 134 Fed. 216, 67 C. C. A. 142, Code Iowa 1897, § 1305, providing for assessment of property at quarter of value, is void in so far as it affects ability of city to pay water rentals under contract made when law provided for assessment at actual value; Graham v. Folsom, 200 U. S. 252, 50 L. 468, 20 Sup. Ct. 245, arguendo.

Syl. 6 (VI, 764). Mandamus to compel tax levy.

Approved in Ward v. Piper, 69 Kan. 777, 77 Pac. 700, applying rule in action to compel municipal officers to pay judgment on bond coupons from interest fund; Territory v. Mayor etc. of City of Socorro, 12 N. M. 185, 76 Pac. 285, it is no defense to mandamus to compel city to levy tax to pay bonds that relator owns only portion of bond issue.

5 Wall. 720-737, 18 L. 614, PHILADELPHIA v. COLLECTOR.

Syl. 4 (VI, 765). Payment by compulsion of law under protest.

Approved in Kahn v. Herold, 147 Fed. 579, 580, where at time executors paid inheritance tax on life estate under protest they had no knowledge that life tenant had died, payment not voluntary so as to preclude recovery.

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5 Wall. 737-761, 18 L. 667, THE KANSAS INDIANS.

Syl. 3 (VI, 768). Tribal Indians subject to federal laws.

Approved in In re Heff, 197 U. S. 506, 49 L. 856, 25 Sup. Ct. 506, sale of liquor within state to Indian to whom allotment made under act of 1887, not an offense under 29 Stat. 506, c. 109.

Distinguished in Montana Catholic Missions v. Missoula Co., 200 U. S. 127, 50 L. 402, 26 Sup. Ct. 197, claim that cattle owned by Jesuits are exempt from state taxation because Jesuits' income devoted to educating reservation Indians does not confer federal jurisdiction.

Syl. 5 (VI, 769). State taxation of Indian's lands.

Approved in Goudy v. Meath, 38 Wash. 129, 80 Pac. 297, where patent to Indians was subject to treaty exempting it from sale or levy until restriction removed by statute, and statute passed allowing alienation after ten years, lands taxable after ten year period elapsed.

Syl. 8 (VI, 771). Construction of Indian treaties.

Approved in Winters v. United States, 143 Fed. 746, under treaty of 1888 with Montana Indians, portion of waters of Milk river reserved for irrigation of reservation lands.

5 Wall. 772-785, 18 L. 556, SUPERVISORS v. SCHENCK.

Syl. 5 (VI, 774). Ratification of railroad aid bonds.

Approved in Schmitz v. Zeh, 91 Minn. 295, 97 N. W. 1051, where county aid bonds issued under authority of statute and sold to bona fide purchasers, and taxes levied for thirteen years to pay interest, taxpayer estopped to attack validity.

5 Wall. 795-808, 18 L. 653, DEERY v. CRAY.

Syl. 1 (VI, 778). Recitals in ancient deeds as evidence.

Approved in Wilson v. Braden, 56 W. Va. 375, 107 Am. St. Rep. 929, 49 S. E. 410, recitals of heirship and widowhood in deeds upward of thirty years old, under which possession continuously held, are admissible against adverse claimants.

Syl. 3 (VI, 779). Recital in married woman's acknowledgment.

See 108 Am. St. Rep. 569, note.

Syl. 4 (VI, 780). Error must be prejudicial to reverse.

Approved in Sprinkle v. United States, 150 Fed. 59, where defendants were jointly indicted with others, typewritten letter purported to have been dictated by one of them and signed in his name by rubber stamp was inadmissible against him; Inman Bros. v. Dudley etc. Co., 146 Fed. 452, in action for breach of contract to sell all lumber on hand and entire cut for certain year estimated at certain figure, exclusion of evidence by defendant of amount actually cut during year is prejudicial; Armour & Co. v. Russell, 144 Fed. 615, in action for

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personal injuries to servant, it is prejudicial to instruct that it is master's duty to furnish reasonably safe place to work, reasonably safe appliances, and to keep them in reasonably safe repair; Seattle Elec. Co. v. Hartless, 144 Fed. 381, under Bal. Code (Wash.), §§ 4828, 4838, relating to actions for wrongful death by heirs and personal representatives, in action by widow and daughter, evidence as to their physical condition is inadmissible; Bank of Havelock v. Western Union Tel. Co., 141 Fed. 526, where evidence is insufficient to sustain verdict for defeated party in action for sending unauthorized telegram, instruction directing verdict against him on other and erroneous ground is not prejudicial; National Biscuit Co. v. Nolan, 138 Fed. 9, 70 C. C. A. 436, applying rule where, in action for personal injuries, plaintiff permitted to testify that she depended on herself for support; Union Pac. R. Co. v. Field, 137 Fed. 18, 69 C. C. A. 536, applying rule where counsel in argument insinuated erroneous views of law as to measure of damages; Resurrection Gold Min. Co. v. Fortune Gold Min. Co., 129 Fed. 677, 64 C. C. A. 180, applying principle where witness on direct examination had related part of conversation, and cross-examination as to entire conversation denied.

5 Wall. 819-822, 18 L. 613, WITHENBURG v. UNITED STATES.

Syl. 1 (VI, 782). Final appealable decree in prize case.

Approved in Dodge v. Norlin, 133 Fed. 365, 66 C. C. A. 425, bankruptcy court judgment that chattel mortgage on alleged property of bankrupt is voidable by trustee, and that mortgagee has no lien and is not entitled to preference out of proceeds, is final appealable judgment.

VI WALLACE.

6 Wall. 31-35, 18 L. 749, SOUTHERN S. S. CO. v. PORT WARDENS.

Syl. 1 (VI, 790). Congress exclusively regulates interstate commerce.

Approved in Globe Elevator Co. v. Andrew, 144 Fed. 884, holding void Laws Wis. 1905, p. 37, c. 19, as amended, providing for inspection of grain, as applied to interstate shipments.

Syl. 4 (VI, 791). Fee for vessels arriving is tonnage duty.

Approved in Way v. New Jersey S. B. Co., 133 Fed. 192, Laws N. Y. 1897, p. 701, c. 592, § 63, imposing tonnage duty, is void.

6 Wall. 50-78, 18 L. 721, STATE OF GEORGIA v. STANTON.

Syl. 1 (VI, 797). Political questions not for courts.

Approved in Anthony v. Burrow, 129 Fed. 790, denying jurisdiction to enjoin state officers from issuing certificate of nomination to con-

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gressional candidate; Shoemaker v. City of Des Moines, 129 Iowa, 248, 105 N. W. 521, refusing to restrain execution of contract by city officials at suit of voter, for purchase of voting machines on ground that they are not adaptable.

(VI, 797). Miscellaneous. Cited in Lockhart v. Leeds, 195 U. S. 437, 49 L. 269, 25 Sup. Ct. 76, relief under general prayer not deniable because it is asked for under different theory than that on which special prayer is based, where both prayers based on same facts.

6 Wall. 78-80, 18 L. 750, LUKINS v. AIRD.

Syl. 2 (VI, 799). Fraudulent conveyance—Sale by failing debtor.

Approved in Wise v. Pfaff, 98 Md. 583, 56 Atl. 817, where deed made immediately on receipt of letter that money due on mortgage must be paid, and grantor knew deficiency judgment would be entered, and grantee received none of rents from property for long time, deed was fraudulent.

6 Wall. 80-83, 18 L. 725, WOOD v. STEELE.

Syl. 1 (VI, 801). Alteration of commercial paper as discharge.

Approved in Merchants' etc. Bank v. Baltimore etc. S. B. Co., 102 Md. 580, 582, 63 Atl. 110, 111, change of date in bills of lading invalidates them; First National Bank v. Carter, 138 Mich. 428, 101 N. W. 588, where school order for supplies was signed by officers, removal therefrom of certificate by payee that he had received official voucher containing recital that matter left to vote of annual meeting of district was material alteration.

Syl. 2 (VI, 801). Materiality of alteration of note for jury.

Approved in Leppert v. Flaggs, 101 Md. 75, 60 Atl. 451, in action on building contract bond, plea that contract materially changed without averring in what respect it was changed or allegation of facts constituting change is insufficient.

Syl. 3 (VI, 801). When alteration of instrument material.

Approved in Merchants' etc. Bank v. Baltimore etc. S. B. Co., 102 Md. 581, 63 Atl. 110, change in date of bills of lading invalidates them.

Syl. 6 (VI, 802). Innocent holder of altered note.

Approved in Merchants' etc. Bank v. Baltimore etc. S. B. Co., 102 Md. 583, 586, 63 Atl. 111, 112, change in date of bills of lading invalidates them even in hands of bona fide pledgee.

6 Wall. 83-91, 18 L. 727. WILSON v. WALL.

Syl. 5 (VI, 803). When vendee charged with constructive notice.

Approved in United States v. Detroit Timber etc. Co., 200 U. S. 333, 50 L. 504, 26 Sup. Ct. 282, purchaser of property of lumber com-

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pany not charged with knowledge of wrongful character, as against government, of conveyances of standing timber which might have been gained by investigation of company's books; Reed v. Munn, 148 Fed. 756, purchaser with notice under purchaser without notice is bona fide purchaser; United States v. Detroit etc. Lumber Co., 131 Fed. 675, receiver's final certificates are notice to purchasers of equitable title they evidence that they are avoidable by Land Department for fraud or error at any time before patents issue; Havighorst v. Bowen, 214 Ill. 98, 73 N. E. 405, where beneficiary under trust deed acquired fee from grantor of trust deed, and trustee released deed before notes which were pledged to third party were due, fact that record showed notes had not matured is not notice of improper discharge to subsequent lienholder; dissenting opinion in Wasserman v. Metzger, 105 Va. 768, 771, 54 S. E. 900, 901, majority holding where one of two notes paid and collusively transferred to another, who procured to him sale by trustee of property securing it, and he then executed trust deed to loan association for benefit of first payee's wife, latter not bona fide purchaser as against lien for payment of other note secured by original trust deed.

6 Wall. 94-100, 18 L. 752, WICKER v. HOPPOCK.

Syl. 3 (VI, 805). Damages—Duty to diminish damages.

Approved in Indian Mountain etc. Coal Co. v. Asheville etc. Coal Co., 134 N. C. 588, 47 S. E. 121, applying rule under contract to sell all coal required.

Distinguished in Lillard v. Kentucky Dist. etc. Co., 134 Fed. 178, 67 C. C. A. 74, buyer of distillery slop for feeding purposes under contract, whereby seller was to deliver it in troughs suitable for feeding, may recover, though he did not himself erect troughs where he relied on seller's repeated promises to do so; Allen v. Field, 130 Fed. 653, 65 C. C. A. 19, where defendant contracted for purchase of greater part of product of plaintiff's distillery for fifteen years, on repudiation of contract by defendant after two years, plaintiff not bound to operate distillery and market product.

Syl. 4 (VI, 805). Damages for breach of indemnity contract.

Approved in Dancel v. Goodyear Shoe etc. Co., 137 Fed. 159, where corporation purchases entire property and assets of another, and gives bond to pay all its debts and assume all its contracts, latter is not indispensable party to suit in equity against purchaser to enforce its liability on such contract; Broadwell v. Banks, 134 Fed. 476, covenant by lessee to pay taxes, not being one of indemnity, cause of action to recover same accrues to lessor on failure to pay taxes; Cudaback v. Hay, 134 Fed. 123, where defendant purchased realty in another's name, agreeing to furnish money to pay taxes and principal and interest on mortgage, and save him harmless from all charges, defendant's liability was fixed on rendition of deficiency judgment on

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foreclosure; Cousins v. Paxton & Gallagher Co., 122 Iowa, 469, 98 N. W. 279, where sheriff accepted bond to indemnify him against liability for damages sustained by levy on personalty, he cannot recover thereon for attorney's fees incurred in defending action for conversion till fee actually paid; Northern Assur. Co. v. Borgelt, 67 Neb. 286, 93 N. W. 227, where insurance agent gave bond to faithfully perform all duties and obey instructions, and they neglected to cancel policy as directed, action on bond not barred until five years from loss to obligee.

6 Wall. 116-124, 18 L. 730, OSTERMAN v. BALDWIN.

Syl. 1 (VI, 807). Alien's capacity to hold lands.

Approved in Pembroke v. Huston, 180 Mo. 639, 79 S. W. 472, alien not justified in rescinding contract for exchange of lands.

Syl. 2 (VI, 807). Naturalization waives forfeitures due to alienage.

Approved in Shea v. Nilima, 133 Fed. 215, 66 C. C. A. 263, agreement between two aliens to acquire mining claims for joint benefit may be enforced by one subsequently declaring intention to become citizen.

6 Wall. 134-139, 18 L. 765, THOMPSON v. RAILROAD COS.

Syl. 1 (VI, 809). Jurisdictional objections raisable on appeal.

Approved in Perez v. Fernandez, 202 U. S. 100, 50 L. 949, 26 Sup. Ct. 561, supreme court will of own motion, on writ of error, inquire into jurisdiction of lower court, irrespective of exception; Nichols v. Board of Commrs. of Western Co., 13 Wyo. 8, 76 Pac. 682, where final judgment is not supported by pleadings or findings, it may be vacated on error, on record proper, without bill of exceptions.

Syl. 2 (VI, 810). Federal equity not limited by state law.

Approved in Mutual Life Ins. Co. v. Blair, 130 Fed. 974, where equity has jurisdiction of suit to cancel life policy for fraud, fact that insured died prior to answer and that action at law brought on policy does not deprive equity court of jurisdiction; Anthony v. Burrow, 129 Fed. 790, denying equity jurisdiction to enjoin state officers from issuing certificate of nomination to congressional candidate.

Syl. 3 (VI, 811). Adoption of state practice.

Approved in Ames Realty Co. v. Big Indian etc. Co., 146 Fed. 176, rights given Civ. Code Mont., § 1891, providing that in actions for protection of water rights plaintiff may make all diverters of water from same source parties and court may settle rights of all parties, are enforceable in federal court; Levi v. Mathews, 145 Fed. 154, in action at law for recovery of money due under contract, court cannot entertain defense of fraud in procurement of contract; Chapman v. Yellow Poplar Lumber Co., 143 Fed. 206, bill in federal court to compel reconveyance of property conveyed by complainants to defendants and also for damages for breach of the contract, states two causes of action; Illinois Life Ins. Co. v. Newman, 141 Fed. 453, federal equity

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cannot enjoin collection of state tax on ground of its illegality; Davidson etc. Imp. Co. v. Parlin etc. Co., 141 Fed. 40, simple contract creditor who has not reduced claim to judgment cannot have claim adjudicated in equity; Union Stockyards Co. v. Nashville Packing Co., 140 Fed. 706, where cause removed from state court, which was competent to grant either equitable or legal relief, and plaintiff proceeds in equity in federal court, and no case is made for equitable relief, court cannot award damages; Anglo-American etc. Co. v. Lombard, 132 Fed. 731, 68 C. C. A. 89, in action at law to enforce stockholder's liability, defendant cannot set off indebtedness from corporation to him.

6 Wall. 139-142, 18 L. 819, WEST v. AURORA CITY.

Syl. 1 (VI, 812). Affirmative answer not new removable suit.

Approved in Smithers v. Smith, 35 Tex. Civ. 511, 80 S. W. 648, following rule; Indian etc. Coal Co. v. Ashville etc. Coal Co., 135 Fed. 840, where, after judgment in favor of nonresident plaintiff was affirmed as to original cause of action but reversed as to counterclaim, defendant amended counterclaim by increasing amount demanded, plaintiff could not remove cause.

Syl. 2 (VI, 813). Removal—Appearance in state court waives.

Distinguished in Price v. Ellis, 129 Fed. 483, where defendant in action by nonresident files counterclaim for more than $2,000, cause is removable by plaintiff at or before time to plead to counterclaim.

6 Wall. 142-152, 18 L. 753, RECTOR v. ASHLEY.

Syl. 4 (VI, 815). Statutes govern claimants to public lands.

Approved in Tyee Consol. Min. Co. v. Langstedt, 1 Alaska, 447, ten year statute of limitations begins to run in favor of adverse possessor of part of mining claim from time of location and not from date of patent; Graham v. Great Falls etc. Co., 30 Mont. 403, 76 Pac. 811, applying rule in construing act of 1891, relating to confirmation of contested pre-emptions in hands of bona fide purchasers.

6 Wall. 153-157, 18 L. 762, PROVIDENCE RUBBER CO. v. GOODYEAR.

Syl. 1 (VI, 816). Appeal—Rights determined from filing.

Approved in In re McCall, 145 Fed. 901, 902, time limit for review of order confirming bankrupt's composition runs from entry of confirmation order on record.

6 Wall. 166-209, 18 L. 768, RIGGS v. JOHNSON COUNTY.

Syl. 1 (VI, 819). Jurisdiction continues till judgment satisfied.

Approved in Hatcher v. Hendrie etc. Supply Co., 133 Fed. 270, 68 C. C. A. 19, suit in equity to enforce attachment lien obtained in former action is maintainable irrespective of citizenship or of custody

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of proceeds of attached property; Louisville Trust Co. v. Knott, 130 Fed. 825, 65 C. C. A. 158, where, on expiration of corporation's franchise, its assets delivered to liquidator and minority stockholders filed state suit to inspect books, and pending suit creditor obtained appointment of federal receiver, state court had priority of jurisdiction; Ingraham v. National Salt Co., 139 Fed. 690, arguendo.

Syl. 4 (VI, 820). Mandamus by circuit court.

Approved in Barber Asphalt Pav. Co. v. Morris, 132 Fed. 955, 67 L. R. A. 761, 66 C. C. A. 55, granting mandamus to circuit judge to vacate order staying proceedings in action on claim against city pending state appeals.

Syl. 7 (VI, 822). State injunction of federal proceedings.

Approved in Beardslee v. Ingraham, 183 N. Y. 417, 76 N. E. 477, where federal court issued attachment against property of corporation, and writ filed in office of clerk of county where property situated, and afterward receiver appointed by state court in suit for dissolution, state court cannot enjoin marshal from selling attached property on execution.

Distinguished in Shaw v. Frey, 69 N. J. Eq. 324, 59 Atl. 812, state court may enjoin prosecution of federal action pending discovery of matters necessary to trial of such action.

Syl. 9 (VI, 824). Mandamus to levy tax to pay bonds.

Approved in Theis v. Commrs. of Washita County, 9 Okl. 653, 60 Pac. 508, where county commissioners have issued bridge warrants in accordance with statute, mandamus lies to compel tax levy to liquidate warrants. See 105 Am. St. Rep. 216, 217, note.

6 Wall. 213-216, 18 L. 753, THE ROCK ISLAND BRIDGE.

Syl. 2 (VI, 827). Maritime lien not dependent on possession.

Approved in The San Rafael, 141 Fed. 281, lien for maritime tort follows vessel into hands of bona fide purchaser.

Syl. 4 (VI, 827). What subject to maritime lien.

Approved in United States v. Evans, 195 U. S. 365, 49 L. 237, 25 Sup. Ct. 46, upholding admiralty jurisdiction over libel in rem against vessel for negligently colliding with beacon built on piles in channel; Bowers Hyd. etc. Co. v. Federal Cont. Co., 148 Fed. 294, upholding admiralty jurisdiction over suit to recover for hire of dredge intended to operate a float, though dredge temporarily used on land to dredge stream.

6 Wall. 225-230, 18 L. 823, THE VANDERBILT.

Syl. 1 (VI, 829). Collision—Navigation in river.

Approved in Lake Erie Transp. Co. v. Gilchrist Transp. Co., 142 Fed. 91, where it is customary for vessels to pass between buoy and

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light, agreement made to pass port to port requires each vessel to keep on starboard side of channel between light and buoy.

6 Wall. 231-241, 18 L. 783, MASON v. ELDRED.

Syl. 3 (VI, 830). Partner's obligations are joint.

Approved in Outcalt v. Collier, 8 Okl. 477, 58 Pac. 644, where one of several joint debtors on note consents to judgment against all, and on motion court vacates judgment as to portion of defendants who did not authorize consent, judgment must be set aside as to all defendants.

Syl. 4 (VI, 830). Judgment against one joint obligor.

Approved in Outcalt v. Collier, 8 Okl. 478, 58 Pac. 644, where one of several joint debtors on note consents to judgment against all, and on motion court vacates judgment as to portion of defendants who did not authorize consent, judgment must be set aside as to all defendants.

(VI, 830). Miscellaneous. Cited in Bell v. St. Johnsbury etc. R. R. Co., 76 Vt. 52, 56 Atl. 109, notice and opportunity to be heard are prerequisites to judgment.

6 Wall. 247-254, 18 L. 851, THE MAYOR OF NASHVILLE v. COOPER.

Syl. 1 (VI, 832). No costs where no jurisdiction.

Approved in Nutter v. Brown, 58 W. Va. 245, 52 S. E. 92, 1 L. R. A. (N. S.) 1083, decree respecting allowances of expenses and compensation of receiver is appealable.

Distinguished in Graham v. Oregon etc. Nav. Co., 134 Fed. 692, where exceptions to libel in admiralty for want of jurisdiction are sustained, libel may be amended.

Syl. 2 (VI, 833). Doubts resolved in favor of validity of law.

Approved in Board of Commrs. of Onslow Co. v. Tollman, 145 Fed. 766, upholding Laws N. C. 1885, p. 439, c. 233, incorporating railroad and authorizing issuance of county aid bonds.

Syl. 3 (VI, 833). Federal courts—Cases involving federal questions.

Approved in Anthony v. Burrow, 129 Fed. 787, question whether county is lawfully in congressional district, where it was placed by state statute, is not federal question.

6 Wall. 258-262, 18 L. 829, MILLINGAR v. HARTUPEE.

Syl. 1 (VI, 835). When federal question exists.

Approved in Harris v. Rosenberger, 145 Fed. 452, appeal from circuit court to circuit court of appeals lies where constitutionality of statute empowering postmaster general to issue fraud orders as well as its construction is involved; York Co. Sav. Bank v. Abbot, 131

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Fed. 982, upholding federal jurisdiction over suit by lessee against nonresident lessor to compel lessor to either buy building from or sell land to complainant, at appraised value, under terms of lease.

6 Wall. 280-291, 18 L. 825, BARNEY v. BALTIMORE.

Syl. 1 (VI, 838). Partition—All co-owners necessary parties.

Approved in Goldman v. Millay, 7 Ariz. 288, 64 Pac. 434, in action for partition by administrator of mortgagee of undivided half of library against purchaser of other half, widow of mortgagor in possession of plaintiff's undivided half is necessary party.

Syl. 2 (VI, 838). Proper and necessary parties distinguished.

Approved in Perkins v. Hendryx, 149 Fed. 528, in suit to vacate decree in favor of partnership, where firm dissolved and one of partners has died since decree, his administrators are not necessary parties; United States v. Northern Pac. R. Co., 134 Fed. 719, 67 C. C. A. 269, in suit by United States, in which annulment of contract between corporations is sought is necessary incident to other relief, court cannot try case where it has no jurisdiction over one of corporations making contract.

Syl. 4 (VI, 840). Citizen of territory cannot sue in federal court.

Approved in Laden v. Meck, 130 Fed. 879, 65 C. C. A. 361, allegation in removal petition that certain of petitioners are "residents" of state other than that of plaintiff's citizenship, and that none of them are "residents and citizens" of state of plaintiff's citizenship, is insufficient.

6 Wall. 291-298, 18 L. 919, CRAWFORD v. ADDISON.

Syl. 1 (VI, 843). Salary as damages on quo warranto supersedeas.

Approved in Jones v. Carver, 17 Colo. App. 489, 68 Pac. 1067, where opinion in proceedings to try title to office was that plaintiff was lawfully appointed and his removal illegal, judgment estopped defendant in action to recover emoluments of office.

6 Wall. 299-316, 18 L. 786, CLEMENTS v. MOORE.

Syl. 2 (VI, 845). Fraudulent sale void though value paid.

Approved in In re Pease, 129 Fed. 448, merchant gave chattel mortgage on stock and with proceeds paid certain creditors in full and next day mortgagee took possession and sold stock, transaction was void under Bankr. Act, c. 541, § 67e.

Syl. 3 (VI, 846). Equitable relief to buyers at fraudulent sale.

Approved in Lynch v. Burt, 132 Fed. 432, 67 C. C. A. 305, one claiming through grantee in fraudulent conveyance, who did not participate in fraud, is entitled to reimbursement for payments for taxes.

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Syl. 5 (VI, 847). Buyer has burden of disproving fraud.

Approved in dissenting opinion in Hickey v. Davidson, 129 Iowa, 396, 105 N. W. 682, majority holding where decedent's son was insolvent and his interest in decedent's property exhausted by advancements made by father, conveyance by sisters to infant son of insolvent brother of their interest in land descended to them from father not in fraud of brother's creditors.

6 Wall. 316-318, 18 L. 736, THOMPSON v. BOWMAN.

Syl. 1 (VI, 847). Partnership in purchase of lands.

Approved in Beers v. Sharpe, 44 Or. 393, 75 Pac. 719, cotenant cannot transfer any greater interest in water rights appurtenant to estate than own interest.

6 Wall. 318-327, 18 L. 816, EX PARTE McCARDLE.

Syl. 1 (VI, 848). Habeas corpus by federal courts.

Approved in West Virginia v. Laing, 133 Fed. 891, 66 C. C. A. 617, upholding release on habeas corpus where member of posse assisting in arrest of one indicted in federal court arrested under state process for murder; State v. Van Huse, 120 Wis. 21, 97 N. W. 505, arguendo.

6 Wall. 355-363, 18 L. 810, MASSINA v. CAVAZOO.

Syl. 9 (VI, 853). Bills of exceptions must be signed.

Approved in Woods v. Beaton, 2 Alaska, 3, where trial judge, to whom bill of exceptions was presented, left bench without signing it, his successor cannot sign it.

6 Wall. 363-382, 18 L. 863, GRISAR v. McDOWELL.

Syl. 3 (VI, 854). Pueblo's claim imperfect till lands assigned.

Approved in Bowden v. San Francisco, 199 U. S. 600, 50 L. 328, 26 Sup. Ct. 748, following rule; Wallace v. Adams, 143 Fed. 724, arguendo.

Syl. 12 (VI, 855). Confirmation of land grant dates back.

Approved in United States v. Anderson, 194 U. S. 399, 48 L. 1039, 24 Sup. Ct. 716, government cannot, as against grantees of lands within indemnity limits of railroad grant, retain sums collected for removal of stone between selection and approval of selection; Peyton v. Desmond, 129 Fed. 12, 63 C. C. A. 651, homestead patentee may recover value of timber wrongfully cut after initiation of claim and prior to issuance of patent; Florida Town Imp. Co. v. Bigalsky, 44 Fla. 776, 33 So. 451, President could in 1842 and 1849, by executive order, without special congressional authorization, reserve part of public domain on Amelia Island for military reservation.

Syl. 13 (VI, 856). President may reserve public lands.

Approved in United States v. Tully, 140 Fed. 901, reciting history of Ft. Missoula Military Reservation; Gibson v. Anderson, 131 Fed. 41.

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65 C. C. A. 277, President may reserve portion of unoccupied public lands for Indian reservation, notwithstanding Rev. St., § 2319, relating to mineral deposits on public lands; Crawford v. Burr, 2 Alaska, 35, arguendo.

Syl. 14 (VI, 856). Suit against officer as suit against government.

Approved in Wadsworth v. Boysen, 148 Fed. 780, denying federal jurisdiction over suit to enjoin Indian agent from obstructing complainant from prospecting on government lands; O'Reilly De Camara v. Brooke, 135 Fed. 388, upholding right of action against military governor of Cuba for tort committed in official capacity against individual in course of civil administration. See 108 Am. St. Rep. 839, note.

6 Wall. 385-402, 18 L. 830, UNITED STATES v. HARTWELL.

Syl. 1 (VI, 857). Office defined.

Approved in Smith v. Van Buren Co., 125 Iowa, 457, 101 N. W. 187, construing Code, § 441, relating to selection of official newspaper by supervisors; State v. Theus, 114 La. 1104, 38 So. 873, parish superintendent of public instruction is a public officer; State v. Maroney, 191 Mo. 545, 90 S. W. 146, judges and clerks of election appointed under Laws 1903, p. 170, are public officers holding for fixed period; Opinion of the Justices, 73 N. H. 622, 62 Atl. 970, notaries public are public officers; Guthrie Daily Leader v. Cameron, 3 Okl. 682, 41 Pac. 636, Sess. Laws 1895, p. 47 does not create office of public printer.

Syl. 2 (VI, 858). Clerk appointed by departmental head is officer.

Approved in McGregor v. United States, 134 Fed. 196, clerk in Postoffice Department is officer indictable under Rev. St., §§ 1781, 1782, prohibiting officers from receiving compensation for aiding in procuring government contract.

Distinguished in United States v. Schlierholz, 137 Fed. 620, 622, 623, special agent of Land Department appointed under appropriation act of June 4, 1897, was not United States officer within meaning of Rev. St., § 5481, relating to extortion; United States v. Cole, 130 Fed. 619, cashier of mint appointed under Rev. St., § 3504, is not officer of mint within Rev. St., § 3506, relating to custody of coin.

Syl. 4 (VI, 859). Penal statutes strictly construed.

Approved in Wadsworth v. Boysen, 148 Fed. 776, construing 36 Stat. 1016, ratifying agreement by which Shoshone Indians ceded Wind River Reservation; United States v. Greene, 146 Fed. 779, construing Rev. St., § 5497, relating to embezzlement of public money; McInerney v. United States, 143 Fed. 733, original application of alien for naturalization filed in federal court, together with record of proceedings thereon, constitute record within Rev. St., § 5403, punishing theft of records; State v. Woodward, 182 Mo. 407, 103 Am. St. Rep. 646, 81 S. W. 862, under Rev. St. 1899, § 2043, punishing bribery of or at-

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tempt to bribe jurors, evidence showing proposal of willingness to give bribe is sufficient; State v. Hesterly, 182 Mo. 27, 28, 103 Am. St. Rep. 634, 81 S. W. 628, Rev. St. 1899, § 1845, prohibits teacher from carnally knowing female pupil under eighteen at any time during existence of relation of teacher and pupil; Choctaw etc. R. R. Co. v. Alexander, 7 Okl. 595, 54 Pac. 422, construing Stat. 1893, p. 597, c. 38, regulating prairie fires.

6 Wall. 402-419, 18 L. 925, STARK v. STARRS.

Syl. 1 (VI, 860). Quieting title by possessor against adverse claimant.

Approved in Shewalter v. Lexington, 143 Fed. 166, in suit to quiet title against street improvement certificates amounting to less than $2,000, amount of certificates and not value of land constitutes subject matter of action; dissenting opinion in Logan v. Ward, 58 W. Va. 378, 52 S. E. 403, arguendo.

Syl. 2 (VI, 861). Suit by possessor to determine adverse claims.

Approved in Foss v. Dam, 1 Alaska, 346, one in possession of lot on public lands and using same for purposes of trade or residence may sue to quiet title thereto; Muckle v. Gord, 45 Or. 232, 77 Pac. 744, applying rule in suit to quiet title to tide lands.

Distinguished in Ladd v. Mills, 44 Or. 227, 75 Pac. 142, under B. & C. Comp., § 516, administrator may sue in equity to determine adverse possession.

Syl. 5 (VI, 863). Patent relates back to inception of rights.

Approved in United States v. Detroit Timber etc. Co., 200 U. S. 335, 50 L. 505, 26 Sup. Ct. 282, purchaser from patentees for value without notice of entryman's fraud is entitled to protection as bona fide purchaser under Comp. St. 1901, p. 1545, though he acquired interest in lands under contract for timber before patents issued; United States v. Anderson, 194 U. S. 399, 48 L. 1039, 24 Sup. Ct. 716, government cannot, as against grantee of lands within indemnity limits of railroad grant, retain sums collected for removal of stone between selection and approval of selection; Tegarden v. Le Marchel, 129 Fed. 490, state statute giving defendant in ejectment right to recover value of improvements made in good faith under color of title not applicable where plaintiff claims under patent issued after improvements made; Peyton v. Desmond, 129 Fed. 12, 63 C. C. A. 651, patentee under homestead laws may recover value of timber cut between initiation of claim and issuance of patent; Blumer v. Iowa R. R. Land Co., 129 Iowa, 38, 105 N. W. 344, as against railroad entitled to land under grant, limitations run in favor of occupant under timber culture act from time occupant enters under receiver's receipt; Flanagan v. Forsythe, 6 Okl. 236, 50 Pac. 155, lands entered for homestead are not exempt from liability for debts after final proof made and final certificates issued; Washington Rock

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Co. v. Young, 110 Am. St. Rep. 666, 29 Utah, 121, 80 Pac. 387, where entry of public land was made in land office on faith of original government survey, patent related back to entry and was based on original survey; Kneeland v. Korter, 40 Wash. 356, 82 Pac. 610, 1 L. R. A. (N. S.) 745, where tide lands within place limits of grant surveyed and identified and railroad performed all conditions prior to admission of state, railroad entitled to land though patent issued after adoption of constitution.

Distinguished in dissenting opinion in Kneeland v. Korter, 40 Wash. 374, 82 Pac. 613, 1 L. R. A. (N. S.) 745, majority holding where tide lands within place limits of railroad grant surveyed and identified and railroad performed all conditions prior to admission of state, railroad entitled to land though patent issued after adoption of constitution.

Syl. 7 (VI, 865). Constructive trusts—Compelling conveyance.

Approved in Kerns v. Lee, 142 Fed. 988, and Johnson v. Pacific Coast S. S. Co., 2 Alaska, 238, both following rule.

6 Wall. 458-481, 18 L. 869, DOE, LESSEE, v. CONSIDINE.

Syl. 2 (VI, 870). Measure of extent and duration of trusts.

Approved in Brillhart v. Mish, 99 Md. 458, 58 Atl. 31, construing trust deed, for grantor's life, by owner of curtesy in land; Angle v. Marshall, 55 W. Va. 680, 47 S. E. 886, construing trust deed for purpose of managing estate as power of attorney revocable irrespective of provision of irrevocability.

Syl. 6 (VI, 871). Vested remainder defined.

Approved in Archer v. Jacobs, 125 Iowa, 478, 481, 101 N. W. 199, devise to daughter for life, remainder to her children or grandchildren, but if there be none then to testator's son, daughter took life estate and her children vested remainder; O'Day v. Meadows, 194 Mo. 618, 92 S. W. 645, deed conveying land to wife through third person, estate to commence at death of husband and continue during wife's life, conveyed vested interest; Curtis v. Zutavern, 67 Neb. 194, 93 N. W. 405, quitclaim deed passes reversionary rights in land which owner holds subject to dower estate; In re Kountz's Estate, 213 Pa. 397, 62 Atl. 1105, 3 L. R. A. (N. S.) 639, under will providing for children and grandchildren, income to be paid to them for life, and for division among grandchildren after death of children, grandchildren took contingent remainder; Rhode Island Hospital Trust Co. v. Noyes, 26 R. I. 329, 58 Atl. 1002, under will giving certain part of income to sister and residue to grandson until he should attain certain age, and if he should die before such age then income to go in other ways, grandson took vested interest in trust fund.

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Syl. 12 (VI, 872). Executory devises and contingent remainders not favored.

Approved in Anderson v. Messinger, 146 Fed. 939, where testator declared that if either of two sons died without descendants, survivor should take his estate, and if survivor so died then half of decedent's portion and half of portion taken by survivorship should go to testator's brothers and sisters, sons took life estate; Thomas v. Castle, 76 Conn. 451, 56 Atl. 855, construing will giving estate in trust for son, who may use income and after his death to others, as creating contingent remainder.

Syl. 15 (VI, 873). Vesting of devise to class in futuro.

Approved in Taylor v. Stephens, 165 Ind. 205, 74 N. E. 982, construing devise to wife for life and at her death to testator's children as giving children vested remainder.

6 Wall. 481-484, 18 L. 930, WALKLEY v. CITY OF MUSCATINE.

Syl. 1 (VI, 874). Mandamus to compel tax to pay judgment.

Approved in Marra v. San Jacinto etc. Irr. Dist., 131 Fed. 790, applying rule where regularly organized irrigation district issued bonds; Anthony v. Burrow, 129 Fed. 789, refusing mandatory injunction requiring state officer to certify nomination of certain person as congressional candidate.

6 Wall. 484-491, 18 L. 920, UNITED STATES v. ECKFORD.

Syl. 2 (VI, 875). Circuit court's jurisdiction limited.

Approved in Kentucky v. Powers, 201 U. S. 24, 50 L. 644, 26 Sup. Ct. 387, denial of equal civil rights in summoning or impaneling jurors does not give right of removal of criminal prosecution.

Syl. 4 (VI, 876). Setoff against United States.

Approved in United States v. Gillies, 144 Fed. 991, limitation does not run against action on claim during pendency of action against claimant in which such claim is pleaded as setoff, which action is discontinued by plaintiff; United States v. Warren, 12 Okl. 365, 71 Pac. 690, in action by United States, defendant may set off demand to extent of government's claim.

6 Wall. 492-494, 18 L. 931, FOLEY v. SMITH.

Syl. 1 (VI, 876). Taker of overdue note subject to equities.

Distinguished in Gardner v. Beacon Trust Co., 190 Mass. 31, 76 N. E. 456, 2 L. R. A. (N. S.) 767, where transferee of overdue note obtains it from owner by fraud, bona fide purchaser takes it free from equity of original owner.

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6 Wall. 499-511, 18 L. 890, GARDNER v. THE COLLECTOR.

Syl. 1 (VI, 878). President need not date bill on signing.

Approved in Quinn v. Cambridge, 187 Mass. 509, 73 N. E. 661, 69 L. R. A. 311, determining when assessment for betterments must be made under Pub. St. 1882, c. 51, § 1, providing that assessment must be made within two years of original order.

Syl. 3 (VI, 878). Statutes—Evidence to determine date of approval or terms.

Approved in In re Seaholm, 136 Fed. 145, 69 C. C. A. 142, under Comp. St. Supp. 1903, p. 411, amending bankruptcy act, bankrupt cannot procure discharge on own application where within six years he has been granted discharge in voluntary proceedings; Rogers v. State, 72 Ark. 567, 82 S. W. 170, holding void anti-gambling act of 1901; Ex parte Helton, 117 Mo. App. 619, 93 S. W. 915, construing Laws 1905, pp. 168, 169, relating to game protection.

Limited in Sconten v. Whatcom, 33 Wash. 282, 74 Pac. 392, under statutes providing for consolidation of cities, election of officers may be conducted within six months of filing result of election with Secretary of State.

6 Wall. 514-517, 18 L. 933, UNITED STATES v. COUNCIL OF KEOKUK.

Syl. 3 (VI, 881). Mandamus lies to compel tax levy.

Distinguished in State v. Board of Commrs. of Clinton Co., 162 Ind. 606, 70 N. E. 984, mandamus will not lie to compel county commissioners to order collection of railroad aid tax which it had been enjoined from enforcing.

6 Wall. 532-542, 18 L. 939, HANGER v. ABBOTT.

Syl. 10 (VI, 886). Limitation did not run during Rebellion.

Approved in Alice E. Min. Co. v. Blanden, 136 Fed. 255, holding under Iowa limitation statute note sued on after death of maker, and at earliest possible date after maker's death, not barred.

Distinguished in Patterson v. Safe Deposit etc. Co., 148 Fed. 790, where action commenced in District of Columbia more than two years after accrual was pending seven years later, when defendant died in Maryland, and two years after his death action commenced against executor in Maryland, plaintiff guilty of laches.

6 Wall. 556-561, 18 L. 948, INSURANCE CO. v. HALLOCK.

Syl. 1 (VI, 890). Process must have seal.

Distinguished in Leas v. Merriman, 132 Fed. 512, notice given in conformity with Virginia statute authorizing judgment on motion after notice need not be under seal.

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Syl. 2 (VI, 890). Order of sale void without seal.

Approved in Kipp v. Burton, 29 Mont. 100, 101, 102, 101 Am. St. Rep. 544, 74 Pac. 86, 87, 63 L. R. A. 325, execution issued without seal was validated by Act of March 2, 1899, p. 145, § 2, without amendment by the court.

6 Wall. 561-572, 18 L. 894, CANAL CO. v. GORDON.

Syl. 2 (VI, 891). Failure to make contract payments as breach.

Approved in Brock v. Williams, 16 Okl. 126, 82 Pac. 923, where subcontractor requests original contractor to have architect make estimate of materials furnished and labor done, and make payments as per contract, and contractor fails to do so, former nor bondsman not liable for abandoning work.

6 Wall. 578-582, 18 L. 791, ROBERTS v. GRAHAM.

Syl. 1 (VI, 892). Special damages must be averred.

Approved in Salt River etc. Co. v. Hickey, 4 Ariz. 244, 36 Pac. 173, in action for damages for refusal of corporation to deliver certificate of stock bought from it, allegation of general damages is sufficient; Thompson v. St. Louis etc. Ry. Co., 111 Mo. App. 475, 86 S. W. 468, functional trouble manifesting itself in woman seventy days after severe blow, caused by nervous shock, is matter of special damage which must be specially pleaded; Friedman v. Pulitzer Pub. Co., 102 Mo. App. 694, 77 S. W. 343, where petition for libel charged generally that plaintiff had been greatly damaged by publication, and claimed actual and punitive damages, evidence that plaintiff had been suspended from association of persons engaged in his business inadmissible.

Syl. 3 (VI, 893). Objection of variance not first raisable on appeal.

Approved in Collot v. Kahner, 140 Fed. 839, following rule; Preiss v. Zitt, 148 Fed. 618, applying rule in action for broker's commissions; Chicago etc. Ry. Co. v. Voelker, 129 Fed. 529, 65 C. C. A. 226, 70 L. R. A. 264, where, in action for wrongful death by reason of defective coupler, there was no objection to evidence to interstate character of shipment, objection to instruction applying Comp. St. 1901, p. 3174, not available on appeal where exception below not placed on ground that petition failed to aver interstate shipment; Black v. Teeter, 1 Alaska, 566, applying rule in ejectment.

6 Wall. 594-611, 18 L. 897, SOCIETY FOR SAVINGS v. COITE.

Syl. 2 (VI, 894). Corporate franchises are legal estates.

Approved in dissenting opinion in San Francisco Nat. Bank v. Dodge, 197 U. S. 96, 49 L. 681, 25 Sup. Ct. 384, majority holding discrimination against national banks results from taxation of national bank shares under Cal. Pol. Code, §§ 3608-3610, at market value.

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Syl. 3 (VI, 894). Taxation of corporate franchises—Exemptions.

Approved in New York v. State Board of Tax Commrs., 199 U. S. 40, 105 Am. St. Rep. 701, 50 L. 76, 25 Sup. Ct. 715, franchise tax imposed by Laws 1899, c. 712, does not impair obligation of grant of privilege of operating railway in New York on payment of percentage of earnings; State v. Savage, 65 Neb. 747, 91 N. W. 721, state board of equalization in assessment of railroad and telegraph properties should include value of franchises.

Syl. 4 (VI, 895). Tax on deposits—Not property tax.

Approved in American Smelting etc. Co. v. People, 34 Colo. 247, 82 Pac. 533, Sess. Laws 1902, p. 73, c. 3, § 65, imposing license tax on foreign corporations, does not impose property tax; Levy v. State, 161 Ind. 258, 68 N. E. 175, upholding Burns' Rev. St. 1901, §§ 7231a, 7231t, prohibiting business by transient merchants without license.

6 Wall. 611-632, 18 L. 907, PROVIDENT INSTITUTION v. MASSACHUSETTS.

Syl. 4 (VI, 897). State tax on bank deposits.

Approved in Attorney General v. Electric etc. Battery Co., 188 Mass. 240, 74 N. E. 467, upholding Stat. 1903, p. 450, c. 437, § 75, imposing excise tax on foreign corporations assessed on capital stock.

6 Wall. 632-641, 18 L. 904, HAMILTON COUNTY v. MASSACHUSETTS.

Syl. 3 (VI, 899). Corporate franchise are taxable.

Approved in Attorney General v. Electric etc. Battery Co., 188 Mass. 240, 74 N. E. 467, upholding Stat. 1903, p. 450, c. 437, § 75, imposing excise tax on foreign corporations assessed on capital stock.

6 Wall. 642-719, 18 L. 950, GAINES v. NEW ORLEANS.

Syl. 1 (VI, 900). Conclusiveness of foreign probate.

Approved in Ward v. County Commrs. Logan Co., 12 Okl. 278, 70 Pac. 382, probate court decree admitting will to probate not collaterally attackable in ejectment brought by heirs to dispossess devisee under will.

6 Wall. 723-739, 18 L. 967, WILLIAMSON v. SUYDAM.

Syl. 2 (VI, 903). Appointment of new trustees by court.

Approved in dissenting opinion in Metcalfe v. Union Trust Co., 181 N. Y. 54, 73 N. E. 503, majority holding where will established trust fund to provide income for wife for life and children, assigned all interest in remainder to her and she then released to herself all interest in income, trust not terminated where will made prior to Laws 1897, p. 507, c. 417, § 3.

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6 Wall. 747, 748, 18 L. 847, FLEMING v. SOUTTER.

Syl. 1 (VI, 904). Mortgages—Decree for installment payments.

Approved in Dancel v. Goodyear Shoe etc. Co., 137 Fed. 161, equity decree giving judgment on contract by which defendant must pay monthly installments, not all of which are due, may provide for entry of judgment for future installments as they fall due.

6 Wall. 748-750, 18 L. 859, RAILROAD CO v. CHAMBERLAIN.

Syl. 1 (VI, 904). Citizenship in ancillary proceedings.

Approved in Ames Realty Co. v. Big Indian Min. Co., 146 Fed. 179, 180, in suit to protect water rights against other appropriators of stream, all of whom are citizens of different states from complainant, cross-bills by some defendants against complainant and codefendants setting up priority are maintainable irrespective of citizenship.

6 Wall. 752-756, 18 L. 885, JAMES v. RAILROAD CO.

Syl. 2 (VI, 906). Purchase of corporate property at foreclosure by directors.

Approved in The Telegraph v. Lee, 125 Iowa, 22, 98 N. W. 366, where treasurer secretly purchased claim against corporation for less than full value, and then sold portion to favored members, and then secretly paid himself amount of claim from corporation's funds, he is liable to corporation for profit.

6 Wall. 756-759, 18 L. 973, SMITH v. COCKRILL.

Syl. 1 (VI, 906). Adoption of state practice.

Approved in Jones v. Rogers, 85 Miss. 830, 38 So. 745, under How. & H. Dig., p. 633, § 17, providing that sales of land shall be at courthouse of county, execution sale by marshal, on federal judgment, outside of county where land situated, is void.

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VII WALLACE.

7 Wall. 1-16, 19 L. 53, GIRARD v. PHILADELPHIA.

Syl. 2 (VI, 912). Effect of change on rights of old municipality.

Approved in School Dist. No. 76 v. Capitol Nat. Bank, 7 Okl. 50, 54 Pac. 311, debts incurred by township for erection of schoolhouse, payment of teachers and for support of separate schools, under Laws 1890, c. 79, art. 13, are county and not township debts; City of Guthrie v. Territory, 1 Okl. 202, 31 Pac. 194, 11 L. R. A. 418, change of village corporation into city, since liability of village for debts of provisional organization fixed by legislature, does relieve city succeeding village from liability for debts; South Carolina Mut. Ins. Co. v. Price, 67 S. C. 210, 45 S. E. 174, where name of insurance company changed by legislature, member of old company not deprived of membership in new.

7 Wall. 16-25, 19 L. 57, BANKS v. NEW YORK (NEW YORK v. CONNELLY).

Syl. 4 (VI, 914). State taxation of federal obligations.

Approved in dissenting opinion in South Carolina v. United States, 199 U. S. 466, 50 L. 272, 26 Sup. Ct. 110, majority holding government may exact revenue license from dispensing agents of state controlling liquor business.

Distinguished in Hibernia Savings etc. Soc. v. San Francisco, 200 U. S. 313, 315, 50 L. 496, 497, 26 Sup. Ct. 265, United States treasury checks for interest accrued on government bonds are taxable by states in hands of owner; South Carolina v. United States, 199 U. S. 452, 50 L. 266, 26 Sup. Ct. 110, government may exact internal revenue license from dispensing agents of state which controls liquor business.

7 Wall. 26-31, 19 L. 60, BANK v. SUPERVISORS.

Syl. 1 (VI, 914). State tax on federal obligations.

Approved in Hibernia Savings etc. Soc. v. San Francisco, 200 U. S. 314, 50 L. 496, 26 Sup. Ct. 265, United States treasury checks for interest accrued on government bonds are taxable by states in hands of owner.

7 Wall. 44-53, 19 L. 65, INSURANCE CO. v. TWEED.

Syl. 1 (VI, 915). Distinction between law and equity prevails.

Approved in Tootle v. Brown, 4 Okl. 615, 46 Pac. 551, following rule; National Surety Co. v. Cincinnati etc. Ry. Co., 145 Fed. 35,

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where action at law is tried without jury and only general finding made and ultimate facts not agreed upon, and no exceptions taken to rulings, no questions are reviewable; York v. Washburn, 129 Fed. 566, 64 C. C. A. 132, opinion of trial judge does not become special finding of ultimate facts by being copied into judgment entry.

Syl. 5 (VI, 919). Insurance—Proximate and remote cause.

Approved in Niver Coal Co. v. Cheronea S. S. Co., 142 Fed. 410, where, because of strike of coal miners, much coal imported by many ships, causing delay in discharge, strike not proximate cause of delay within charter provision exempting charterer from demurrage on account of delay caused by strikes; Quinette v. Bisso, 136 Fed. 840, 69 C. C. A. 825, one entering skiff for passage across river during fog and run down by tug and drowned not contributorily negligent because skiff had no fog horn; Texas & P. Ry. Co. v. Coutourie, 135 Fed. 473, 68 C. C. A. 177, where loss alleged to have been caused by negligence of carrier in failing to protect goods, failure to specifically define proximate and remote causes not error where jury instructed that defendant's negligence must have been direct cause of loss; Empire State etc. Co. v. Atchison etc. Ry. Co., 135 Fed. 141, where carrier was unable to deliver cattle owing to floods and put them in another place in stockyards, which were flooded after arrival and cattle changed to prevent drowning, and many died, carrier not liable; Jarnagin v. Travelers' Prot. Assn., 133 Fed. 894, 895, 68 L. R. A. 499, 66 C. C. A. 622, where it was alleged that deceased died from shot fired by third persons while in charge of officers, and that death caused by negligence of officers in failing to protect him, proximate cause of death was shot; Fishburn v. Burlington etc. Ry. Co., 127 Iowa, 497, 103 N. W. 487, where railroad snow fence negligently constructed fell and injured boy, fact that earlier in day boy found panel in fence down and lifted it in place not independent intervening cause of accident; Georgetown Tel. Co. v. McCullough, 118 Ky. 189, 111 Am. St. Rep. 294, 80 S. W. 784, where defendant rented two rooms in building, using one for storing materials, and owner of building employed carpenter to build partition next to storeroom, to do which dynamite in room removed by carpenter exploded, injurying defendant's employee, defendant not liable; Haley v. St. Louis Transit Co., 179 Mo. 35, 77 S. W. 731, 64 L. R. A. 295, street-car company not liable to passenger carried beyond destination and injured by slipping on sidewalk while returning to destination; Shippers' Compress etc. Co. v. Davidson, 35 Tex. Civ. 560, 80 S. W. 1033, where defendant unlawfully erected gangway in street and plaintiff's horse frightened at noise of defendant's servant in running down gangway with truck, defendant liable for consequent injuries; Snyder v. Philadelphia Co., 54 W. Va. 158, 102 Am. St. Rep. 941, 46 S. E. 369, 63 L. R. A. 896, where, by negligent blowing off of gas-well, horses frightened and rein breaks, causing driver to fall, blowing off of well is proximate cause of injury, though rein was weak.

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7 Wall. 53-71, 19 L. 67, THE CHINA.

Syl. 1 (VI, 919). Collision—Compulsory pilot's negligence.

Approved in The Bulley, 138 Fed. 172, vessel liable for tortious act of master or crew in deluging another vessel with steam and hot water, though committed without authority of owners; The Robert Rickmers, 131 Fed. 642, fact that anchorage of ship selected by master of tug does not relieve her from liability for injury to another vessel against which she drifted, due to fact that she was placed too near other vessel; The Surprise, 129 Fed. 881, 64 C. C. A. 309, persons furnishing wharfage or supplies to vessel on order of master have lien therefor, though, under charter, charterer is bound to make all disbursements and protect vessel from liens.

Syl. 6 (VI, 921). Nature of maritime lien for collision.

Approved in United States v. Evans, 195 U. S. 367, 49 L. 237, 25 Sup. Ct. 46, upholding admiralty jurisdiction over libel against ship for collision with beacon standing in channel and built on piles; The W. G. Mason, 142 Fed. 917, where two tugs belonging to same owner were towing ship, leading tug directing ship's movements, but rear tug's movements directed by own master, rear tug not liable in rem for stranding of tow through fault of leading tug.

7 Wall. 71-81, 19 L. 101, LANE COUNTY v. OREGON.

Syl. 7 (VI, 922). Powers reserved to states.

Approved in Northern Securities Co. v. United States, 193 U. S. 348, 48 L. 705, 24 Sup. Ct. 436, upholding enforcement of anti-trust act by federal decree enjoining corporation organized in pursuance of combination of stockholders of two competing interstate railroads to acquire control of companies from exercising such control.

Syl. 12 (VI, 923). Extent, manner and subjects of taxation for states.

Approved in Gay v. Thomas, 5 Okl. 10, 46 Pac. 581, upholding Act 1895, providing for taxation of cattle ranging in unorganized country in county to which country is attached for judicial purposes.

Syl. 14 (VI, 924). Debts arising on contract—Taxation.

Distinguished in In re Waller, 142 Fed. 887, county is not entitled to priority over other creditors for money due on delinquent taxes under Bankr. Act, § 64b.

7 Wall. 82-107, 19 L. 42, AURORA CITY v. WEST.

Syl. 7 (VI, 926). Judgment must be final to work estoppel.

Approved in Spring Valley Coal Co. v. Patting, 210 Ill. 347, 71 N. E. 373, judgment of reversal and granting new trial and subsequent entry of nonsuit by trial court, not final judgment raising estoppel by verdict.

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Syl. 12 (VI, 927). Former judgment as res adjudicata.

Approved in Ayres v. Cone, 138 Fed. 781, where validity of claim of petitioning creditor is put in issue by bankrupt's answer, and decided in favor of creditor, claim cannot again be contested when filed for allowance before referee; Third Nat. Bank v. Atlantic City, 130 Fed. 754, 65 C. C. A. 177, where bill to establish right to fund, setting out grounds of right and alleging its priority was taken pro confesso, decree rendered thereon was, after term, conclusive against defaulting defendant as to any matters which might have been set up in answer; Rew v. Independent School Dist., 125 Iowa, 31, 106 Am. St. Rep. 282, 98 N. W. 803, federal judgment based on conclusion that school district is estopped by recitals in bonds from setting up certain defenses is res adjudicata in state suit between same parties involving same subject matter.

Syl. 14 (VI, 928). Judgment on demurrer, when final.

Approved in Frye v. Miley, 54 W. Va. 333, 46 S. E. 139, where bill to set aside fraudulent conveyance before creditor's demand is due is dismissed, decree must save plaintiff right to prosecute other proper suit in respect to matters complained of in bill.

Syl. 15 (VI, 928). Judgment on demurrer as res adjudicata.

Approved in Board of County Commrs. v. Cross, 12 N. M. 77, 73 Pac. 616, where, on sustaining demurrer, material issues had to be passed on and plaintiff did not amend but allowed entry of dismissal, judgment was res adjudicata.

Syl. 17 (VI, 928). Judgment on demurrer as bar.

Approved in Board of County Commrs. v. Cross, 12 N. M. 76, 73 Pac. 616, following rule; Lockhart v. Leeds, 12 N. M. 167, 76 Pac. 315, judgment against plaintiff on bill to have mine location declared void for fraud and collusion of defendants and violation of agreement to locate claim for plaintiff, bars suit to have property declared to be held in trust for plaintiff.

Syl. 21 (VI, 930). Former judgment, when conclusive.

Approved in Delaware etc. R. Co. v. Kutter, 147 Fed. 59, where only defense pleaded in action for money due under contract was breach of contract by plaintiff, judgment therein is conclusive only on that question in subsequent suit for wrongful termination of contract by defendant; Georgia R. R. etc. Co. v. Wright, 132 Fed. 917, state decision that railroad charter was contract precluding imposition of tax in excess of certain percentage is res adjudicata in subsequent suit for taxes for other year under different statute; Pratt v. Ratliff, 10 Okl. 174, 61 Pac. 525, holding decree in suit to enjoin execution on judgment alleged to be void as res adjudicata in replevin against sheriff holding under execution on judgment; Moore v. Snowball, 98 Tex. 24, 107 Am. St. Rep. 596, 81 S. W. 8, 66 L. R. A. 745, decree in

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trespass to try title, where it was alleged tax sale void for want of service and because property sold in bulk not res adjudicata in suit for reconveyance, alleging invalidity of tax sale because of irregularities causing property to be sold for inadequate price; State v. McEldowney, 54 W. Va. 702, 47 S. E. 653, decree in suit assailing tax deed for errors and irregularities in sale is not res adjudicata on question of power to sell for taxes.

7 Wall. 107-113, 19 L. 154, DURANT v. ESSEX CO.

Syl. 2 (VI, 934). Decree of dismissal not final decree.

Approved in Robinson v. American Car etc. Co., 142 Fed. 171, decree of dismissal without prejudice of bill for infringement no estoppel in question of validity of patent.

7 Wall. 118-122, 19 L. 86, COWLES v. MERCER COUNTY.

Syl. 4 (VI, 938). State cannot limit federal jurisdiction.

Approved in Barber Asphalt etc. Co. v. Morris, 132 Fed. 949, 950, 67 L. R. A. 761, 66 C. C. A. 55, Duluth charter which provides for appeals from allowance or rejection of city claims to state court, and prohibits payment pending appeals, does not restrict federal court jurisdiction over claims.

Distinguished in Parks Co. v. City of Decatur, 138 Fed. 554, municipal corporation not being suable by attachment in courts of another state, such suit is not removable.

7 Wall. 122-131, 19 L. 125, NICHOLS v. UNITED STATES.

Syl. 11 (VI, 940). Judicial review of revenue department rulings.

Approved in Christie-Street Com. Co. v. United States, 136 Fed. 330, 69 C. C. A. 464, claim for back internal revenue taxes illegally exacted may be enforced by action directly against United States; Cornell Steamboat Co. v. United States, 130 Fed. 482, and United States v. Cornell Steamboat Co., 202 U. S. 195, 50 L. 992, 26 Sup. Ct. 648, both upholding district court's jurisdiction over suit to recover from United States salvage on duties paid on cargo afterward saved from fire while in possession of customs officers.

7 Wall. 132-139, 19 L. 106, LINCOLN v. CLAFLIN.

Syl. 8 (VI, 942). Evidence of contemporaneous frauds.

Approved in Exchange Bank v. Moss, 149 Fed. 344, in action for money obtained by means of conspiracy extending over long period, evidence of similar deceits by cashier of defendant are admissible; Brooks v. United States, 146 Fed. 231, in prosecution for using mails to defraud, letters other than those laid in indictment purporting to have been written by defendants' company are admissible; Olson v. United States, 133 Fed. 854, 67 C. C. A. 21, under indictment for conspiracy to defraud government of lands by illegal entries, evidence that de-

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fendant induced other entries by other person at same time is admissible.

Syl. 10 (VI, 944). Allowance of interest at law.

Approved in Black v. Minneapolis etc. R. R. Co., 122 Iowa, 37, 96 N. W. 986, in action against railroad for burning of hay, jury may add interest to damages sustained; Union Water Power Co. v. Lewiston, 101 Me. 580, 65 Atl. 74, upholding denial of interest on value of each year's excess of water drawn by city in excess of grant.

Syl. 12 (VI, 944). General exception unavailable where one correct.

Approved in Kansas City etc. Ry. Co. v. Prunty, 133 Fed. 21, 66 C. C. A. 163, applying principle to objection to charge in action for personal injuries by employee.

7 Wall. 139-152, 19 L. 109, GREEN v. VAN BUSKIRK.

Syl. 7 (VI, 947). Law governing sales of personalty.

Approved in Reed v. Munn, 148 Fed. 748, where claimants of conflicting mining locations conveyed to trustee to adjust controversy, their equitable interest is subject to execution; In re Greene, 134 Fed. 138, bankrupt's chattel mortgage duly recorded in state where property located is valid as against creditors, though not recorded in state of residence of mortgagor and mortgagee; In re Brannock, 131 Fed. 820, under Iowa Code, § 2906, chattel mortgage on property in mortgagor's possession in county where he is at work and in which he actually resides while at work, is properly recorded in such county, though residence there only temporary; Smead v. Chandler, 71 Ark. 511, 76 S. W. 1068, 65 L. R. A. 353, applying rule to trust deed executed by Missouri corporation in that state and assigning property for benefit of creditors; Cooper v. Philadelphia Worsted Co. (Lees v. Harding etc. Co.), 68 N. J. Eq. 629, 60 Atl. 355, where contract with reference to title of goods situated in another state is there made between resident thereof and New Jersey corporation, to be there performed, it is governed, as to its effect, by laws of that state; Greenville Nat. Bank v. Evans-Snyder-Buel Co., 9 Okl. 370, 60 Pac. 254, chattel mortgage duly filed according to laws of state wherein property situated is superior to rights of one attaching property after its removal to this territory though mortgage not recorded.

Distinguished in Studebaker Bros. Co. v. Mau, 14 Wyo. 78, 82 Pac. 5, where vendee in conditional sale removes property to another state without consent of vendor, latter may enforce lien against subsequent bona fide purchasers, without complying with registration laws of other state.

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7 Wall. 152-165, 19 L. 129, THE SIREN.

Syl. 5 (VI, 952). Damages for collision enforceable in rem.

Approved in The John McCraken, 145 Fed. 707, 708, vessels owned by port of Portland used by it in its work are not seizable by United States in admiralty suit in rem to recover damages for maritime tort.

Syl. 12 (VI, 952). Government's transfer subject to mortgage.

Approved in Walker v. United States, 139 Fed. 413, denying right of government years after expiration of term of office to recover sums paid marshal, who has in good faith rendered accounts for services of deputies which have been paid; United States v. Warren, 12 Okl. 365, 71 Pac. 690, where government sues, defendant has setoff to extent of demand.

7 Wall. 188-195, 19 L. 35, GORDON v. UNITED STATES.

Syl. 2 (VI, 957). Arbitrator defined.

Approved in Levin v. Northwestern Nat. Ins. Co., 146 Fed. 77, award of arbitrators in federal action at law on insurance policy is unimpeachable for fraud or misconduct of arbitrators.

Syl. 3 (VI, 957). Adjustment of government claims—Arbitration.

Approved in United States v. Foreman, 5 Okl. 257, 48 Pac. 98, one suing government in territorial court for recovery of money paid for land entry on which patent erroneously allowed and afterward canceled, need not show surrender of duplicate receipt to Secretary of Interior nor execution of relinquishment of claim to land.

7 Wall. 196-205, 19 L. 113, THE GRACE GIRDLER.

Syl. 5 (VI, 958). Inevitable accident defined.

Approved in The Jumna, 149 Fed. 172, applying rule to collision between tow and steamer and between tow and pier.

7 Wall. 205-218, 19 L. 134, BROWN v. PIERCE.

Syl. 7 (VI, 960). What is duress warranting setting deed aside.

Approved in Burnes v. Burnes, 132 Fed. 493, where surviving brother and partner on opposition to proposed formation of corporation and division of stock threatened to administer on estate as surviving partner, settlement as he proposed not void for duress; First Nat. Bank v. Sargent, 65 Neb. 601, 91 N. W. 597, 59 L. R. A. 296, where one in financial distress and indebted to bank conveyed land by absolute deed as security and thereafter procured purchaser but bank refused to consent to sale or release its interest unless given large bonus, bonus recoverable by debtor.

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Syl. 13 (VI, 961). Priority of judgment lien.

Approved in Lewis v. Atherton, 5 Okl. 94, 47 Pac. 1072, under Stat. 1893, c. 21, § 13, district court judgment against one seised of realty and in whom title appears of record, is lien on property, though he had previously conveyed realty to another.

7 Wall. 219-228, 19 L. 158, SILVER v. LADD.

Syl. 6 (VI, 963). Equitable relief where patent to wrong person.

Approved in Johnson v. Pacific Coast S. S. Co., 2 Alaska, 238, and Smith v. Love, 49 Fla. 239, 38 So. 379, both following rule; Kerns v. Lee, 142 Fed. 988, arguendo.

7 Wall. 229-258, 19 L. 141, BRONSON v. RODES.

Syl. 3 (VI, 965). Payment of money defined.

Approved in Oneida Co. v. Tibbits, 125 Wis. 15, 102 N. W. 899, certificates issued in payment of expenses of reviewing county equalication are not receivable for taxes.

7 Wall. 258-262, 19 L. 149, BUTLER v. HORWITZ.

Syl. 5 (VI, 968). Medium of payment—Contracts.

Approved in San Juan v. St. John's Gas Co., 195 U. S. 520, 49 L. 304, 25 Sup. Ct. 108, determining medium of payment under contract for street lighting in Porto Rico.

7 Wall. 262-269, 19 L. 88, NORTHERN CENTRAL R. R. CO. v. JACKSON.

Syl. 2 (VI, 970). Tax on security and on debtor distinguished.

Approved in Mosely v. State, 115 Tenn. 57, 86 S. W. 716, interest on government bonds not taxable as income.

Syl. 3 (VI, 970). Tax on corporate property in other state.

Approved in Union etc. Transit Co. v. Kentucky, 199 U. S. 202, 50 L. 153, 26 Sup. Ct. 36, assessment under Ky. St., § 4020, on rolling stock permanently located in other state denies due process to Kentucky railroad.

7 Wall. 272-290, 19 L. 74, ST. PAUL ETC. R. R. CO. v. SCHURMEIR.

Syl. 4 (VI, 972). Meander lines not boundary lines.

Approved in Johnson v. Hurst, 10 Idaho, 319, 321, 77 Pac. 788, 789, following rule; Whitaker v. McBride, 197 U. S. 512, 49 L. 861, 25 Sup. Ct. 530, patentee of government lands bordering on stream owns island on his side of center; Peoria v. Central Nat. Bank, 224 Ill. 52, 79 N. E. 298, applying rule where city claimed land as street; McBride v. Steinweden, 72 Kan. 515, 83 Pac. 824, approving defini-

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tion of "island"; Sherwin v. Bitzer, 97 Minn. 255, 106 N. W. 1047, transfer of government lot abutting on lake by number according to survey conveys all land which has become part of lot by recession of lake; Kleven v. Gunderson, 95 Minn. 251, 104 N. W. 6, applying rule where meander corners of government survey lost; Webber v. Axtell, 94 Minn. 379, 102 N. W. 916, patentee of meandered lots entitled to island in lake which later was connected with lots by sandbar, though island patented to another.

Distinguished in Alaska Gold Mining Co. v. Barbridge, 1 Alaska, 324, 325, locator of mining claim cannot include in claim mineral lands that may extend under the sea below high-water mark.

Syl. 8 (VI, 975). Title of riparian owner in stream.

Approved in Franzini v. Layland, 120 Wis. 82, 97 N. W. 503, riparian proprietor on navigable stream owns unsurveyed island on his side of ordinary high-water mark.

Syl. 9 (VI, 976). Riparian owner's rights to wharf out.

Approved in United States v. Roth, 2 Alaska, 262, homestead entry on lands abutting navigable stream gives entryman exclusive right to use and occupation of shore land between high and low water mark as against trespasser.

Distinguished in Sutter v. Heckman, 1 Alaska, 88, owner of uplands bordering on sea has no exclusive right to fish along tide flats.

Syl. 11 (VI, 978). City's title in streets.

Approved in Riverside v. MacLain, 210 Ill. 321, 102 Am. St. Rep. 164, 71 N. E. 413, 66 L. R. A. 288, determining that city had accepted dedication as park of land which had been so platted prior to incorporation.

(VI, 972.) Miscellaneous. Cited in Minnesota Canal etc. Co. v. Koochiching Co., 97 Minn. 440, 107 N. W. 409, defining navigable stream.

7 Wall. 290-295, 19 L. 190, MEAD v. BALLARD.

Syl. 1 (VI, 979). Conveyance on condition that building erected.

Approved in Rannels v. Rowe, 145 Fed. 300, conveyance on condition of building of railroad within three years is on condition subsequent; State v. Irvine, 14 Wyo. 386, 84 Pac. 105, where state incorporated agricultural college, which was public corporation, fact that property thereafter given in trust for it did not preclude repeal of incorporation act.

Syl. 4 (VI, 980). Deeds—"Permanent" in condition subsequent defined.

Approved in Union Stockyards Co. v. Nashville Pack. Co., 140 Fed. 706, applying rule where land deed for erection of packing-

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house which was built but subsequently abandoned; Lucas v. New York etc. R. Co., 130 Fed. 438, 64 C. C. A. 638, where, in consideration of grant of land to village for roadway, railroad when it changed its depot was to make entrances to depot grounds, which it did, but thereafter village changed grade of avenue so that entrance was obstructed, railroad not liable for not continuing entrances.

7 Wall. 299-306, 19 L. 40, DURY v. CROSS.

Syl. 4 (VI, 980). Corporate directors act for benefit of all.

Approved in In re Castle Braid Co., 145 Fed. 230, 231, 235, upholding contract between corporation and directors for purchase of latter's shares of stock in order to settle disputes and terminate litigation; Burns v. Cooper, 140 Fed. 277, applying rule where guardian sold ward's property under order of court, for purpose of having title transferred to himself; City Nat. Bank v. Goshen etc. Mills Co., 35 Ind. App. 579, 69 N. E. 211, applying rule where director of insolvent resigned after it had been agreed that he should resign and have a preference; Attalla Iron Ore Co. v. Virginia etc. Coke Co., 111 Tenn. 536, 77 S. W. 776, where managing officers of corporation formed secret agreement with another to form new corporation in which officials were to have controlling interest, and then they entered into contract with new corporation on behalf of old, latter could annul contract.

Distinguished in Beach v. McKinnon, 148 Fed. 736, bill by receiver of insolvent corporation against director for accounting as to notes alleged to have been transferred from corporation to defendant is insufficient where it does not allege transfer was fraudulent.

7 Wall. 306-313, 19 L. 91, EDMONDSON v. BLOOMSHIRE.

Syl. 5 (VI, 983). Bond unnecessary to constitute appeal.

Approved in In re T. E. Hill Co., 148 Fed. 833, 834, neither citation nor bond are jurisdictional requisite to bankruptcy appeal.

7 Wall. 316-320, 19 L. 192, BOYD v. MOSES.

Syl. 2 (VI, 984). Carrier may refuse goods injurious to others.

Approved in Birt v. Hardie, 132 Fed. 66, upholding refusal of load of flour where master had previously loaded kerosene and feared damage to flour.

7 Wall. 321-327, 19 L. 223, TWITCHELL v. THE COMMONWEALTH.

Syl. 5 (VI, 985). Fifth amendment not limitation on states.

Approved in Ex parte Munn, 140 Fed. 783, federal court cannot, on habeas corpus, release witness imprisoned for refusing to answer questions on ground that answers might incriminate him; In re

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Briggs, 135 N. C. 121, 47 S. E. 404, upholding Code, § 1215, compelling testimony by gamblers; State v. Patterson, 134 N. C. 618, 47 S. E. 810, upholding Laws 1903, p. 472, c. 349, § 2, providing that any place to which liquor shall be shipped for delivery to purchaser shall be deemed place of sale.

7 Wall. 327-331, 19 L. 93, TYLER v. BOSTON.

Syl. 2 (VI, 988). Patent for new chemical combination—Description.

Approved in Panzl v. Battle Is. Paper Co., 138 Fed. 53, 70 C. C. A. 474, Panzl patent No. 644,367, claims 1 and 2, for composition of material for lining pulp digesters, is void for failure to specify proportions of ingredients.

Syl. 4 (VI, 988). Patents—"Equivalents" defined.

Approved in Chadeloid Chemical Co. v. De Ronde Co., 146 Fed. 992, substitution of acetone for alcohol in paint remover is use of chemical equivalent.

7 Wall. 347-354, 19 L. 62, GAINES v. THOMPSON.

Syl. 1 (VI, 991). Mandamus to control discretionary action.

Approved in Adams v. Couch, 1 Okl. 34, 26 Pac. 1015, following rule; Bates etc. Co. v. Payne, 194 U. S. 109, 48 L. 895, 24 Sup. Ct. 595, refusing to enjoin postmaster general for refusing to admit to periodical to mails as second-class matter; Barnes v. Wilson Co. Commrs., 135 N. C. 39, 47 S. E. 741, refusing to mandamus commissioners to issue liquor license; Wilbourne v. Baldwin, 5 Okl. 272, 275, 47 Pac. 1048, denying injunction on application of homesteader where Interior Department has decided that Indian lands are not open to settlement; Fitzgerald v. Keith, 5 Okl. 263, 48 Pac. 111, territorial courts cannot review action of Interior Department in disposing of public domain until title has passed from government; Laramie Nat. Bank v. Steinhoff, 11 Wyo. 307, 71 Pac. 994, where no patent issued on certificate of purchase, court cannot determine title between holder of certificate and claimant under entry; dissenting opinion in Sproat v. Durland, 2 Okl. 52, 35 Pac. 888, majority granting injunction on application of homesteader against adverse claimant interfering with possession, though contest pending in Land Department.

7 Wall. 364-386, 19 L. 214, EX PARTE BRADLEY.

Syl. 6 (VI, 995). Power to punish attorneys for misconduct.

Approved in State v. Mosher, 128 Iowa, 86, 103 N. W. 107, trial court as authorized by statute may revoke license of attorney though supreme court has exclusive authority to admit.

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Syl. 9 (VI, 996). Mandamus to inferior courts.

Approved in State v. Graves, 66 Neb. 23, 92 N. W. 146, granting mandamus to vacate injunction granted without jurisdiction.

Distinguished in Smith v. Connor, 98 Tex. 438, 84 S. W. 817, mandamus to inferior court cannot be substituted for appeal in cases where appeal not given.

Syl. 12 (VI, 996). Mandamus for abuse of discretion.

See 98 Am. St. Rep. 899, note.

7 Wall. 386-392, 19 L. 257, RIDDLESBARGER v. HARTFORD INS. CO.

Syl. 1 (VI, 997). Limitation statutes give no right of action.

Approved in Lynchburg etc. Co. v. Travelers' Ins. Co., 140 Fed. 724, conduct of insurer inducing delay in bringing suit beyond time limited in policy is not entire annulment of limitation clause.

Syl. 3 (VI, 997). Shortening limitations by contract.

Approved in Mead v. Phoenix Ins. Co., 68 Kan. 435, 75 Pac. 475, 64 L. R. A. 79, applying rule where minor's house destroyed during minority and suit on policy brought on attainment of majority but after time limited in policy.

Syl. 4 (VI, 997). Strict compliance with insurance contract required.

Approved in Johnson v. Maryland Casualty Co., 73 N. H. 261, 111 Am. St. Rep. 610, 60 Atl. 1010, delay in giving notice of accident beyond time limit prescribed in policy bars recovery though delay result of the accident.

Syl. 7 (VI, 998). Insurance—Condition fixing time to sue valid.

Approved in Ward v. Pennsylvania Fire Ins. Co., 82 Miss. 129, 33 So. 842, following rule; Lynchburg etc. Mill Co. v. Travelers' Ins. Co., 149 Fed. 958, where employer's liability policy provided for bar of action thirty days after accrual of right, but insurer participated in negotiations for settlement for more than ninety days after expiration of limit, limitation waived; Luckenbach v. Home Ins. Co., 142 Fed. 1026, upholding provision in marine policy limiting time to sue thereon and providing that if action brought after time limited, lapse of time deemed conclusive of invalidity of claim; Spinks v. Mutual etc. Life Assn., 137 Fed. 170, applying rule to life policy; Paul v. Fidelity etc. Co., 186 Mass. 416, 104 Am. St. Rep. 594, 71 N. E. 802, running of limitations provided for in policy for action thereon not stopped by injunction against action thereon, issued after limitation commenced to run; Fey v. I. O. O. F. Mut. L. Ins. Soc., 120 Wis. 367, 98 N. W. 209, statute extending time to sue, where person entitled to sue dies, does not apply to insurance policy limiting time for beneficiary to sue.

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Denied in Union etc. Ins. Co. v. Spinks, 119 Kan. 267, 83 S. W. 616, provision in life policy that no suit shall be commenced thereon after lapse of one year from death is void where statute prescribes fifteen year limitation.

7 Wall. 392-416, 19 L. 117, CHICAGO ETC. R. R. CO. v. HOWARD.

Syl. 1 (VI, 1000). Corporate assets as trust fund for creditors.

Approved in Ex parte Savings Bank of Rock Hill, 73 S. C. 396, 53 S. E. 615, where liquidating bank turned over assets to another bank to pay creditors, and before settlement liquidating bank became insolvent creditor, former had prior lien on assets in possession of receiver of latter belonging to former bank.

Distinguished in Anderson v. War Eagle etc. Min. Co., 8 Idaho, 801, 72 Pac. 673, fact that manager and stockholder in corporation became manager of new corporation, which purchased all stock of old company, does not make new company liable for debts of old.

Syl. 6 (VI, 1002). Corporations may issue negotiable paper.

Approved in In re New York Car Wheel Works, 141 Fed. 435, upholding validity of indorsement by corporation of notes of another corporation; Fidelity Trust Co. v. Louisville Gas Co., 118 Ky. 598, 111 Am. St. Rep. 302, 81 S. W. 930, where corporation authorized to issue bonds for half million it may guarantee payment of million dollars worth of bonds sold by it after it had lawfully acquired them. See 111 Am. St. Rep. 312, 328, note.

Syl. 8 (VI, 1003). Estoppel of corporations by acts.

See 111 Am. St. Rep. 322, note.

Syl. 12 (VI, 1003). Necessary parties to suit against corporation.

Distinguished in Guardian Trust Co. v. Kansas City etc. Ry. Co., 146 Fed. 339, 342, action on liability of foreclosure purchaser for mortgagor's debt under reorganization scheme not impeachment of decree in case in which liability not litigated in foreclosure suit.

7 Wall. 416-425, 19 L. 166, SHEETS v. SHELDON.

Syl. 2 (VI, 1004). Equitable relief against ejectment judgment.

Approved in Brewster v. Lanyon Zinc Co., 140 Fed. 816, upholding equity jurisdiction over suit to cancel oil and gas lease where work of development and production not exercised diligently.

Syl. 6 (VI, 1005). Tenant's repairs at landlord's expense.

Approved in American Bonding Co. v. Pueblo Inv. Co., 150 Fed. 28, following rule.

Syl. 7 (VI, 1005). Tenant's liability for rent on destruction of premises.

Approved in Stevens v. Wadleigh, 6 Ariz. 94, 46 Pac. 72, 6 Ariz. 357, 57 Pac. 624, where owner of land having right to use water for

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irrigation covenants to defend lessee of land in peaceable possession, failure to deliver water does not relieve from payment of rent.

7 Wall. 425-433, 19 L. 260, PAYNE v. HOOK.

Syl. 2 (VI, 1006). Federal equity not limited by states.

Approved in Carlson v. Sullivan, 146 Fed. 479, constitutional provision relating to jury trials applies to suit in federal court in territory by one in possession of land claiming whole title; dissenting opinion in Moore v. Fidelity Trust Co., 138 Fed. 1009, majority denying federal jurisdiction over suit by distributee under will for accounting against decedent's surviving partner, who was executor of estate in probate in state court.

Syl. 4 (VI, 1010). Equity jurisdiction to compel administrator to account.

Distinguished in Thiel Detective etc. Co. v. McClure, 130 Fed. 58, 59, federal court has no equitable jurisdiction over suit by creditor of estate against executor for accounting.

7 Wall. 433-446, 19 L. 95, PACIFIC INS. CO. v. SOULE.

Syl. 1 (VI, 1011). Congressional powers as to taxation.

Approved in McCray v. United States, 195 U. S. 57, 49 L. 96, 24 Sup. Ct. 769, upholding Comp. St. 1901, p. 2228, § 8, taxing artificially colored oleomargarine.

7 Wall. 447-453, 19 L. 207, WARD v. SMITH.

Syl. 5 (VI, 1014). Agent can only accept money.

Approved in Gowling v. American Express Co., 102 Mo. App. 372, 76 S. W. 713, one acepting draft in payment of check he has for collection is liable where draft is stopped by debtor's order.

7 Wall. 463-482, 19 L. 249, UNITED STATES v. ADAMS.

Syl. 2 (VI, 1018). Acceptance of amount allowed by government.

Approved in County Commrs. v. Seawell, 3 Okl. 287, 41 Pac. 594, where claim against county is allowed in part and warrant drawn for part allowed is accepted, recovery on disallowed part of claim is barred.

7 Wall. 482-487, 19 L. 278, UNITED STATES v. KIRBY.

Syl. 1 (VI, 1019). Obstructing mails—Intent.

Approved in United States v. Fifty Waltham Watch Movements, 139 Fed. 300, where one intentionally failed to enter goods at customhouse, though if duly imported they are free of duty, merchandise is forfeitable under Rev. St., § 3082.

Syl. 4 (VI, 1020). Statutory intent governs.

Approved in Mottley v. Louisville etc. R. Co., 150 Fed. 411, Act of 1906, prohibiting free passes, did not invalidate contract made in

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1871, by which carrier agreed to give pass for life in consideration of release of damages; Whitfield v. Aetna Life Ins. Co., 144 Fed. 360, construing Rev. St. Mo. 1899, § 7896, relating to suicide of insured as defense to action on policy; United States v. Ninety-nine Diamonds, 139 Fed. 965, 2 L. R. A. (N. S.) 185, one having right of possession of and lien on goods for duty paid, with option to purchase, is not liable under Comp. St. 1901, p. 1895, § 9, because he making entry as owner; United Shoe M. Co. v. Duplessis Shoe M. Co., 133 Fed. 933, under Comp. St. 1901, p. 589, patent suit against alien may be brought in any district in which defendant is found; Carrigan v. Stillwell, 99 Me. 437, 59 Atl. 685, 68 L. R. A. 386, Rev. St., c. 28, § 38, requiring fire-escapes on buildings where presence of workmen required above first floor, does not apply to ground floor restaurant, whose kitchen is on third floor, and only three employed in kitchen; Moody v. McKinney, 73 S. C. 440, 53 S. E. 544, where person did not voluntarily lend team to another under circumstances which should have led him to believe it would be used to transport liquor at night, team not liable to confiscation under Cr. Code, 594; Jacobson v. Massachusetts, 197 U. S. 39, 103 Am. St. Rep. 876, 49 L. 655, 25 Sup. Ct. 358, arguendo.

7 Wall. 496-499, 19 L. 283, KELLY v. OWEN.

Syl. 1 (VI, 1022). Marriage of woman to citizen makes her citizen.

Approved in Hopkins v. Fachaut, 130 Fed. 843, 65 C. C. A. 1, marriage of alien woman to citizen pending proceedings for her deportation entitles her to discharge on habeas corpus; Potter v. Hall, 11 Okl. 181, 65 Pac. 844, widow of citizen who made homestead entry is citizen, and may acquire land under Rev. St. U. S., § 1994.

7 Wall. 506-515, 19 L. 264, EX PARTE McCARDLE.

Syl. 2 (VI, 1024). Federal appellate jurisdiction limited by statute.

Approved in Jung v. Myer, 11 N. M. 389, 68 Pac. 936, Laws 1901, c. 82, authorizing appeals to supreme court from interlocutary orders affecting substantial rights, is void as conflicting with organic act.

Syl. 5 (VI, 1025). Where jurisdiction ceases court must dismiss.

Approved in United States v. Sena, 12 N. M. 413, 414, 78 Pac. 61, 62, repeal of Laws 1901, p. 190, c. 99, deprived supreme court of jurisdiction over criminal appeals not taken during term at which judgment rendered.

Distinguished in dissenting opinion in United States v. Sena, 12 N. M. 417, 78 Pac. 63, majority holding repeal of Laws 1901, p. 190, c. 99, deprived supreme court of jurisdiction over criminal appeals not taken during term at which judgment rendered.

Syl. 9 (VI, 1027). Repeal of act extending jurisdiction.

Approved in Sena v. United States, 147 Fed. 488, where defendant in criminal case took appeal within time provided by statute, repeal

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of such statute before hearing of appeal did not deprive appellate court of jurisdiction; State v. Van Huse, 120 Wis. 21, 97 N. W. 505, Laws 1903, p. 234, c. 160, legalizing attempted organization of school district, not void as retroacting on past controversy.

7 Wall. 523-541, 19 L. 285, RANDALL v. BRIGHAM.

Syl. 2 (VI, 1029). Judicial officers not liable for judicial acts.

Approved in United States v. Bell, 135 Fed. 338, 68 C. C. A. 144, applying rule in suit for damages against circuit court clerk for refusal to issue summons in action against state judge; Mitchel v. Galen, 1 Alaska, 340, justice of peace acting in collusion with others and issuing warrant for arrest of mine owner for trespass on own property, so that mine may be jumped, is liable to civil suit; Comstock v. Eagleton, 11 Okl. 492, 69 Pac. 957, probate judge not liable for false imprisonment for issuing commitment on judgment in bastardy proceeding; Smith v. Jones, 16 S. D. 345, 92 N. W. 1086, denying right of action against justice of peace for issuing warrant on defective complaint.

Syl. 3 (VI, 1030). Method of disbarment of attorneys.

Approved in In re Branch, 70 N. J. L. 548, 57 Atl. 435, Act April 7, 1903, relieving law clerks from examination, is void.

Syl. 6 (VI, 1031). Following state statutory construction.

Approved in City of Sioux Falls v. Farmers' Loan etc. Co., 136 Fed. 730, 69 C. C. A. 373, applying rule with reference to power of city to increase indebtedness for purpose of constructing waterworks.

7 Wall. 542-559, 19 L. 244, COPPELL v. HALL.

Syl. 10 (VI, 1033). Illegality of contract cannot be waived.

Approved in Fisher v. Hampton Transportation Co., 136 Mich. 223, 98 N. W. 1014, invalidity of contract need not be pleaded where complaint shows contract sued on is against public policy; McGuffin v. Coyle, 16 Okl. 653, 85 Pac. 955, in action on note, where language of note and all evidence shows it to be against public policy, demurrer to evidence sustained; Light v. Conover, 10 Okl. 737, 63 Pac. 968, no action is maintainable on lease made without consent of Indian agent for pasturage of cattle on Indian reservation; Kelly v. Courter, 1 Okl. 282, 30 Pac. 373, where under lease of building for keeping liquor for sale, landlord agrees to supply ice for cooling, tenant cannot recover for damages caused by failure to supply ice where sale of liquor is illegal; dissenting opinion in Stewart v. Wright, 147 Fed. 339, 342, majority holding party given double cross in swindling scheme may recover his money from co-swindlers; dissenting opinion in Monahan v. Monahan, 77 Vt. 151, 59 Atl. 174, 70 L. R. A. 935, majority holding where complainant seeks to impress securities with trust and issue is solely as to title, relief not denied him though securities placed in defendant's name to avoid taxation.

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Distinguished in Stewart v. Wright, 147 Fed. 334, party given double cross in swindling scheme may recover his money from co-swindlers; Minnesota Sandstone Co. v. Clark, 35 Wash. 472, 77 Pac. 805, illegality of provision in contract for sale of store that seller would return to buyer freight rebates allowed by carrier does not affect rest of contract.

7 Wall. 565-571, 19 L. 151, LABER v. COOPER.

Syl. 6 (VI, 1038). Denial of new trial not reviewable.

Approved in United Engineering etc. Co. v. Broadnax, 136 Fed. 353, 69 C. C. A. 177, decision on motion for new trial is not subject of review in federal appellate court.

7 Wall. 580-583, 19 L. 263, UNITED STATES v. ROSENBURGH.

Syl. 1 (VI, 1041). Discretion to quash indictment.

Approved in Dillard v. United States, 141 Fed. 305, applying rule to motion to quash indictment for misjoinder of courts; Chadwick v. United States, 141 Fed. 235, applying rule in prosecution for conspiracy with national bank officer to wrongfully certify checks; McGregor v. United States, 134 Fed. 192, 194, applying rule in prosecution for conspiracy to defraud government; Radford v. United States, 129 Fed. 52, 63 C. C. A. 491, denial of motion to quash indictment because it is based on incompetent evidence is matter of discretion.

7 Wall. 583-610, 19 L. 177, AGAWAM CO. v. JORDON.

Syl. 7 (VI, 1042). First person perfecting machine is inventor.

Approved in United Shirt & Collar Co. v. Beattie, 149 Fed. 742, Pine patent No. 645,871, for collar-folding machine, valid though patentee employed another to construct machine.

Syl. 9 (VI, 1043). Employees entitled to own inventions.

Approved in Eastern etc. Bag Co. v. Continental etc. Bag Co., 142 Fed. 503, upholding Liddell patent No. 558,969, claims 1, 2, and 7, for paper-bag machine.

Syl. 16 (VI, 1044). Patents—Burden of proving infringement.

Approved in Scott v. Fisher etc. Mach. Co., 139 Fed. 145, following rule.

7 Wall. 613-619, 19 L. 203, MORGAN v. BELOIT.

Syl. 1 (VI, 1045). Liability for debts on division of municipality.

Approved in Gamble v. Rural etc. School Dist., 146 Fed. 119, under Iowa Code 1893, § 1715, suit by bondholder of divided school district to enforce payment by new districts, is within federal equity jurisdiction; Chicago v. Cicero, 210 Ill. 294, 71 N. E. 358, upholding Laws

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1903, p. 113, § 1, enlarging corporate limits of sanitary district created by prior act.

Syl. 3 (VI, 1045). Equity—Inefficiency of law remedy.

Approved in Gamble v. Rural etc. Dist., 146 Fed. 120, upholding federal equity jurisdiction over suit by bondholder of divided school district to enforce payment by new district.

7 Wall. 619-624, 19 L. 205, BELOIT v. MORGAN.

Syl. 1 (VI, 1046). Conclusiveness of judgment.

Approved in Allen v. City of Davenport, 132 Fed. 221, 65 C. C. A. 641, where, after commencement of suit to enjoin street improvement and levy of special assessment therefor, work done and city paid for it, and later appellate court decided contract void, decree barred suit by city to enforce lien as on quantum meruit under curative statute; Lockhart v. Leeds, 12 N. M. 167, 76 Pac. 315, judgment against plaintiff on bill to have mine location declared void for fraud of defendants and violation of agreement to locate claim for plaintiff bars suit to have property declared to be held in trust for plaintiff; Board of County Commrs. v. Cross, 12 N. M. 76, 73 Pac. 616, where, on sustaining demurrer, material issues had to be passed on and plaintiff did not amend, but allowed entry of dismissal, judgment was res adjudicata; dissenting opinion in Leathe v. Thomas, 218 Ill. 268, 75 N. E. 818, majority holding that finding that plaintiff was not liable to defendant on judgment pleaded as counterclaim was res adjudicata, not ground for reversal of finding for defendant on counterclaim.

7 Wall. 624-646, 19 L. 266, THE BELFAST.

Syl. 14 (VI, 1054). States cannot create maritime liens.

Approved in John Meunier Gun Co. v. Lehigh Valley etc. Co., 123 Wis. 148, 101 N. W. 388, action for damage to goods shipped not within exclusive admiralty jurisdiction where it is set up in answer that goods shipped by water and damaged while being lightered after grounding of ship; Arnold v. Eastin, 116 Ky. 699, 76 S. W. 856, arguendo.

7 Wall. 646-656, 19 L. 211, WHITE'S BANK v. SMITH.

Syl. 2 (VI, 1056). Which is vessel's home port.

Approved in The New Brunswick, 129 Fed. 896, 64 C. C. A. 325, sea-going vessel owned by corporation of another state not liable for lien for supplies though she was enrolled at port where supplies furnished.

Syl. 6 (VI, 1057). Recordation of mortgage on vessel gives preference.

Approved in The Gordon Campbell, 131 Fed. 965, state statute invalidating chattel mortgage securing note which does not show it is so

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secured does not affect mortgage on vessel enrolled under federal statute.

Syl. 7 (VI, 1058). Regulation of enrolled vessels.

Approved in The Alta, 148 Fed. 665, vessel not registered in United States, though owned by citizen, is subject to tonnage duty on entry from foreign port.

7 Wall. 666-685, 19 L. 169, THE FLOYD ACCEPTANCES.

Syl. 10 (VI, 1063). Acceptance of draft by government officer.

Approved in United States v. Kauhoe, 147 Fed. 187, where sureties on postmaster's bond gave inspector note for amount of default in consideration of extension of time, note void as unauthorized.

7 Wall. 694-699, 19 L. 224, AUSTIN v. BOSTON.

Syl. 2 (VI, 1066). Taxing power unlimited.

Approved in McCray v. United States, 195 U. S. 57, 49 L. 96, 24 Sup. Ct. 769, upholding Comp. St. 1901, p. 2228, as amended in 1902, taxing artificial colored oleomargarine.

7 Wall. 700-743, 19 L. 227, TEXAS v. WHITE.

Syl. 16 (VI, 1071). Validity of acts of rebel legislature.

Approved in Day v. Smith, 87 Miss. 407, 39 So. 528, taxes levied in support of confederacy by Mississippi cannot be treated as though never paid because illegal, in support of sale of land for taxes; Cullins v. Overton, 7 Okl. 480, 482, 54 Pac. 705, where Texas authorities organized disputed territory into county government and afterward courts decide territory was not in Texas, judgment of county court of such county is valid.

Syl. 7 (VI, 1067). State's reserve powers not delegated to government.

Approved in South Carolina v. United States, 199 U. S. 453, 50 L. 266, 26 Sup. Ct. 110, United States may exact revenue tax from dispensing agents of state which has taken charge of liquor business; Northern Securities Co. v. United States, 193 U. S. 348, 48 L. 704, 24 Sup. Ct. 436, arguendo.

Syl. 8 (VI, 1067). Effect of secession ordinances on states.

Cited in Mial v. Ellington, 134 N. C. 156, 46 S. E. 969, 65 L. R. A. 697, arguendo.

Syl. 1 (VI, 1066). Authority to sue on behalf of state.

Approved in Henry v. State, 87 Miss. 35, 39 So. 863, governor cannot sue in name of state.

Distinguished in dissenting opinion in Henry v. State, 87 Miss. 92, 39 So. 883, majority holding governor cannot sue in name of state.

(VI, 1066.) Miscellaneous. Cited in Heinze v. Butte etc. Min. Co., 129 Fed. 279, 63 C. C. A. 388, arguendo.

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VIII WALLACE.

8 Wall. 1-14, 19 L. 361, THORINGTON v. SMITH.

Syl. 1 (VII, 7). Contracts in aid of insurrection unenforceable.

Approved in Cullins v. Overton, 7 Okl. 482, 54 Pac. 705, where Texas authorities organized disputed territory into county government, judgment of county court thereof rendered prior to decree that territory was not in Texas is valid.

Syl. 7 (VII, 12). Parol to explain ambiguity in writing.

Approved in Kilby Mfg. Co. v. Hinchman Fireproofing Co., 132 Fed. 962, 66 C. C. A. 67, admitting parol evidence of prior statement of party as to width of pavement where contract silent.

8 Wall. 15-26, 19 L. 365, THE EAGLE.

Syl. 7 (VII, 15). Federal admiralty jurisdiction act.

Approved in The Winnebago, 141 Fed. 948, upholding Michigan Comp. Laws, c. 298, giving liens for labor and materials used in construction of vessels and providing for their enforcement in state courts.

8 Wall. 64-76, 19 L. 326, MEMPHIS CITY v. DEAN.

Syl. 1 (VII, 20). Suit by stockholder for injury to corporation.

Approved in Doctor v. Harrington, 196 U. S. 588, 49 L. 610, 25 Sup. Ct. 355, fact that interest of corporation defendant may be same as complaining stockholders does not require corporation to be grouped with complainants for purposes of federal jurisdiction, where control of corporation is antagonistic to complainants. See 97 Am. St. Rep. 43, note.

8 Wall. 77-85, 19 L. 449, UNITED STATES v. SPEED.

Syl. 5 (VII, 21). Damages for breach of contract—Expenditures.

Approved in Hadley Dean Plate Glass Co. v. Highland Glass Co., 143 Fed. 244, following rule; Allen v. Field, 130 Fed. 657, 65 C. C. A. 19, in action for breach of contract to take entire product of distillery for term, expert evidence as to amount of deduction of damages by reason of less time engaged and release from trouble and risk of full execution of contract.

8 Wall. 85-106, 19 L. 332, EX PARTE YERGER.

Syl. 2 (VII, 22). Habeas corpus by supreme court.

Approved in Ex parte Moran, 144 Fed. 596, upholding jurisdiction to issue habeas corpus to review power of Oklahoma court to imprison one convicted of capital offense.

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Syl. 5 (VII, 22). Federal original jurisdiction in habeas corpus.

Approved in Ex parte Moran, 144 Fed. 596, upholding jurisdiction to issue habeas corpus to review power of Oklahoma court to imprison one convicted of capital offense.

Syl. 6 (VII, 23). Habeas corpus to circuit court's decision.

Approved in Ex parte Moran, 144 Fed. 601, upholding jurisdiction to review by habeas corpus power of Oklahoma court to imprison one convicted of capital offense.

8 Wall. 110-123, 19 L. 342, WARING v. THE MAYOR.

Syl. 2 (VII, 25). State tax on original packages.

Approved in Gulf etc. Ry. Co. v. State, 97 Tex. 286, 78 S. W. 499, determining when shipment of grain lost its interstate character.

Syl. 3 (VII, 26). Sale of goods at sea.

Approved in United States v. Hartwell Lumber Co., 142 Fed. 437, determining what tariff law governed where merchandise in American waters prior to taking effect of act of 1897, though not in place customary for unloading until after act took effect.

8 Wall. 123-147, 19 L. 382, WOODRUFF v. PARHAM.

Syl. 2 (VII, 26). Tax on goods from other states—Discrimination.

Approved in In re Sydow, 4 Ariz. 210, 36 Pac. 215, upholding Laws 1893, Act No. 83, imposing license tax on vendors of merchandise; Territory v. Denver etc. R. R. Co., 12 N. M. 433, 78 Pac. 76, upholding Laws 1901, p. 96, c. 45, § 3, prohibiting transportation out of territory of hides not inspected and tagged, for which ten cents a hide was charged; People v. Reardon, 184 N. Y. 456, 112 Am. St. Rep. 645, 77 N. E. 978, upholding Laws 1905, pp. 474, 477, imposing tax on transfers of corporate shares; Wrought Iron Range Co. v. Campen, 135 N. C. 516, 518, 47 S. E. 661, 662, Pub. Laws 1903, p. 333, c. 247, taxing peddlers of stoves, is void as to sales by sample of goods manufactured in another state and delivered in original package; American Steel etc. Co. v. Speed, 110 Tenn. 546, 100 Am. St. Rep. 814, 75 S. W. 1042, goods sent by foreign corporation to agent in state in original package to have ready for future sales are taxable by state. See notes, 112 Am. St. Rep. 651; 100 Am. St. Rep. 835, 836.

8 Wall. 148-153, 19 L. 387, HENSON v. LOTT.

Syl. 3 (VII, 29). Discrimination—State tax on imports.

Approved in American Steel etc. Co. v. Speed, 110 Tenn, 546, 100 Am. St. Rep. 814, 75 S. W. 1042, goods sent by foreign corporation to agent in state in original package to have ready for future sale are taxable by state.

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8 Wall. 168-185, 19 L. 357, PAUL v. VIRGINIA.

Syl. 1 (VII, 33). Equal protection—Corporations not citizens.

Approved in Miller v. Ahrens, 150 Fed. 656, trust created by will for benefit of foreign religious corporation, involving devise of land in West Virginia, is void as against public policy of such state; Kirven v. Virginia-Carolina Chemical Co., 145 Fed. 292, failure of foreign corporation to comply with state statute imposing conditions precedent to right to do business in state does not render contracts void; Attorney General v. Electric Storage Battery Co., 188 Mass. 240, 74 N. E. 467, upholding Act of 1903, requiring certain classes of foreign corporations to annually file certificate of certain facts and pay excise tax assessed on its capital stock; Myatt v. Ponca City Land etc. Co., 14 Okl. 223, 78 Pac. 194, 68 L. R. A. 810, where foreign corporation attempts to acquire title to property vested in individual, latter may deny its corporate capacity as defense; Kansas City etc. Ry. Co. v. Stevenson, 135 Fed. 554, arguendo.

Syl. 2 (VII, 34). Jurisdiction—Citizenship of corporation.

Approved in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 248, 49 L. 466, 25 Sup. Ct. 251, upholding removal of proceeding for taking land by eminent domain under state statute.

Syl. 3 (VII, 35). What are privileges and immunities guaranteed.

Approved in State v. Weber, 96 Minn. 431, 105 N. W. 493, upholding state constitutional provision limiting right of suffrage of naturalized citizens to such as are admitted three months prior to election.

Syl. 6 (VII, 37). Recognition of foreign corporation rests on county.

Approved in State v. Kansas etc. Gas Co., 71 Kan. 791, 81 Pac. 508, and Standard Oil Co. v. Commonwealth, 104 Va. 685, 52 S. E. 390, both following rule; Security Mut. Life Ins. Co. v. Prewitt, 202 U. S. 252, 50 L. 1016, 26 Sup. Ct. 619, upholding state statute that if foreign insurance company removes case to federal court it shall lose license to do business in state; Evansville etc. Traction Co. v. Henderson Bridge Co., 132 Fed. 404, federal court cannot compel Kentucky corporation to permit Indiana railroad, which has not complied with Kentucky statutes, to connect with its tracks so as to permit railroad to do business in Kentucky; Black v. Vermont Marble Co., 1 Cal. App. 719, 82 Pac. 1061, Stat. 1899, p. 111, providing that foreign corporations not designating agent on whom process may be served cannot sue in state courts, prohibits such corporation from pleading limitations as defense; American Smelting etc. Co. v. People, 34 Colo. 255, 82 Pac. 536, upholding act of 1901, requiring foreign corporation to pay fee on filing certificate of incorporation; Old Wayne etc. Assn. v. McDonough, 164 Ind. 327, 73 N. E. 705, upholding Pennsylvania statute requiring foreign insurance companies doing business there to stipulate that process may be served on it by service on insurance

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commissioner or on its designated agent; Prewitt v. Security etc. Ins. Co., 119 Ky. 327, 83 S. W. 612, upholding Ky. St. 1903, § 631, providing for revocation of license of foreign insurance company removing suits to federal courts; Attorney General v. Booth, 143 Mich. 102, 106 N. W. 873, upholding Laws 1899, p. 409, No. 255, providing for revocation of certificate of foreign corporation violating such act; Pollock v. German Fire Ins. Co., 132 Mich. 227, 93 N. W. 437, upholding Comp. Laws, § 7246, defining term "agent" of foreign insurance companies; State v. Fleming, 70 Neb. 524; 97 N. W. 1063, upholding tax on gross earnings of foreign corporations as privilege of doing business in state; Fisher v. Traders' Mut. Life Ins. Co., 136 N. C. 223, 48 S. E. 669, upholding Laws 1901, p. 66, c. 5, requiring foreign corporations to appoint agent, on whom process may be served, and providing for service on secretary of corporation commission if no agent designated; Chapman v. Hallwood Cash Register Co., 32 Tex. Civ. 78, 73 S. W. 970, foreign corporation suing on contract made within state must allege compliance with statutes relating to foreign corporations; Booth v. Weigand, 28 Utah, 385, 79 Pac. 572, contracts of foreign corporation which has failed to comply with statutes relating to such corporations are unenforceable; National Council v. State Council, 104 Va. 204, 51 S. E. 169, upholding act of 1900, creating corporation and giving it authority to organize subordinate councils of certain beneficial order, though it in effect annuls prior existing right of foreign corporation to transact business of order in state; Presbyterian Ministers' Fund v. Thomas, 126 Wis. 284, 110 Am. St. Rep. 919, 105 N. W. 802, upholding Rev. St. 1898, § 1978, prohibiting foreign insurance companies from doing business in state, except in accordance with provisions of statutes; dissenting opinion in Webster v. Ferguson, 94 Minn. 93, 102 N. W. 215, majority holding one not agent of insurance company, not insurance agent under Laws 1895, p. 437, § 87, making insurance agent personally liable on insurance made on behalf of company not authorized to do business in state.

Syl. 7 (VII, 43). Scope of congressional power over commerce.

Approved in Creek-American Sponge Co. v. Richardson Drug Co., 124 Wis. 474, 109 Am. St. Rep. 961, 102 N. W. 890, transaction by which goods are sold to resident by foreign corporation and are consigned to local agent of foreign corporation for delivery to purchaser, is interstate commerce; dissenting opinion in Northern Securities Co. v. United States, 193 U. S. 372, 48 L. 714, 24 Sup. Ct. 436, majority holding combination by stockholders in two competing interstate railroads to form holding company violates anti-trust act.

Syl. 8 (VII, 44). Issuance of insurance policy not commerce.

Approved in Continental Ins. Co. v. Parkes, 142 Ala. 659, 39 So. 207, Code 1896, § 2619, providing that if insurer shall make agreement with insurance companies as to rates of premium, stipulation as to notice shall be void, is valid as to foreign insurance company; dis-

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senting opinion in Northern Securities Co. v. United States, 193 U. S. 377, 48 L. 716, 24 Sup. Ct. 436, majority holding combination by stockholders in two competing interstate railroads to form holding company violates anti-trust act.

Distinguished in Belle City etc. Co. v. Frizzell, 11 Idaho, 10, 81 Pac. 60, foreign corporation selling machinery to citizens of this state on orders to be approved by it, taken by agents, is not doing business here within act requiring such corporations to file articles.

Syl. 9 (VII, 45). Statute licensing foreign insurance companies.

Approved in Metropolitan Life Ins. Co. v. Board of Assessors, 115 La. 706, 39 So. 849, upholding Act No. 170, of 1898, taxing credits representing to equivalent thereof amount of property of foreign corporation utilized by it in business in state.

8 Wall. 202-229, 19 L. 306, SEYMOUR v. FREER.

Syl. 1 (VII, 46). Partnership in lands.

Distinguished in Dexter v. MacDonald, 196 Mo. 394, 95 S. W. 365, where one purchases land and executes instrument agreeing to give another half of net profits of land when sold, no trust created binding purchaser to hold title for such person for half interest in land.

Syl. 8 (VII, 48). Action by cestui for breach of trustee's agreement.

Approved in Jones v. Patrick, 140 Fed. 409, verbal agreement to co-operate in sale of mine and share in profit is not within statute of frauds so as to defeat recovery of share from party who took interest in mine as share of profit from sale.

Syl. 10 (VII, 48). Limitations—Express trust—Absence of disclaimer.

Approved in Eddy v. San Francisco, 148 Fed. 280, under California statute providing for issuance of bonds for widening Dupont street, city not liable for failure to levy taxes for payment of bonds to bondholder who brought suit eight years after maturity of bonds and over twenty years after their issuance; Patterson v. Hewitt, 11 N. M. 42, 66 Pac. 565, 55 L. R. A. 658, applying rule where claimants of conflicting mining claim agreed to abandon claims and make new ones in name of one of them, all to do pro rata of assessment work, and some of claimants delayed eight years before commencing suit for accounting of proceeds.

8 Wall. 230-242, 19 L. 339, MOREY v. LOCKWOOD.

Syl. 2 (VII, 49). Patents—Mere change in form.

Approved in Edison etc. Elec. Co. v. Crouse etc. Elec. Co., 146 Fed. 547, holding Metzger patent No. 489,682, claims 5 and 7, for electric lamp socket, valid and infringed.

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8 Wall. 269-276, 19 L. 453, GIBBONS v. UNITED STATES.

Syl. 2 (VII, 50). What is duress.

Approved in Burnes v. Burnes, 132 Fed. 493, refusing to set aside agreement for division of stock between heirs and surviving partner, where latter threatened to administer estate as surviving partner unless corporation formed.

Syl. 3 (VII, 50). Government not liable for misfeasance.

Approved in Christie Street Com. Co. v. United States, 129 Fed. 507, 509, following rule.

8 Wall. 276-291, 19 L. 349, HUDSON CANAL CO. v. PENNSYLVANIA COAL CO.

Syl. 3 (VII, 52). Contracts—Implications from language.

Approved in Grand Trunk etc. Ry. Co. v. Chicago etc. R. Co., 141 Fed. 802, construing lease of terminal facilities; Amalgamated Gum Co. v. Casein Co. of America, 146 Fed. 911, construing agreement by owner of patented article to sell to defendant as sole customer, provided latter accepted certain quantities, as not binding defendant to take such quantities; Barker v. Pullman Co., 134 Fed. 71, 67 C. C. A. 196, contract providing that insurer agrees, on expiration of insured's policies, to renew same for three years at specified rate, constitutes mere option not binding insured to take insurance; Muscogee Mfg. Co. v. Eagle etc. Mills, 126 Ga. 217, 54 S. E. 1031, construing covenant in city deed to water-front lots; dissenting opinion in Silver Springs etc. R. R. Co. v. Van Ness, 45 Fla. 583, 34 So. 891, majority construing provision in deed to right of way to effect that if mines found along way, and grantor desires to mine, railroad must move tracks on notice, as not being reservation nor condition subsequent.

8 Wall. 302-306, 19 L. 392, THE CARROLL.

Syl. 1 (VII, 54). Collision between steamer and schooner.

Approved in The Pocomoke, 150 Fed. 195, holding steamer liable for collision with launch where vessels were on crossing courses; Brigham v. Luckenbach, 140 Fed. 332, schooner sailing close-hauled and privileged over tug approaching on crossing course not in fault because she kept course as required by rules.

8 Wall. 307-310, 19 L. 394, THE LUCY.

Syl. 2 (VII, 56). Consent does not give jurisdiction.

Approved in Clark v. Doerr, 143 Fed. 961, time to sue out writ of error under Comp. St. 1901, p. 547, cannot be extended by agreement.

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8 Wall. 325-329, 19 L. 455, THE LADY FRANKLIN.

Syl. 1 (VII, 58). Obligation of ship to cargo.

Approved in Guffey v. Alaska etc. S. S. Co., 130 Fed. 274, 64 C. C. A. 517, where at time goods delivered on wharf under bill of lading reciting goods to be shipped on vessel lying at certain port, but owner of goods knew vessel was at sea, and goods never delivered to vessel, vessel not liable to maritime lien for breach of contract; Roy v. Northern Pac. Ry. Co., 42 Wash. 579, 85 Pac. 55, act of carrier's agent in delivering bill of lading for goods which he knew were not delivered to carrier does not bind carrier even as to innocent transferee.

Syl. 2 (VII, 59). Bill of lading is contract and receipt.

See 105 Am. St. Rep. 348, 350, note.

8 Wall. 330-333, 19 L. 396, UNITED STATES v. GILMORE.

Syl. 3 (VII, 59). Contemporaneous statutory construction.

Approved in Pitts v. Logan County, 3 Okl. 740, 41 Pac. 591, state act attempting to regulate accounting by clerks of district courts of territory is void.

8 Wall. 333-337, 19 L. 379, WOOD-PAPER CO. v. HEFT.

Syl. 1 (VII, 60). Adverse interests of parties on appeal.

Approved in Ridge v. Manker, 132 Fed. 601, 67 C. C. A. 596, arguendo.

8 Wall. 342-354, 19 L. 457, EXPRESS CO. v. KOUNTZE BROTHERS.

Syl. 2 (VII, 62). Averments of diverse citizenship.

Approved in Sun Printing etc. Assn. v. Edwards, 194 U. S. 383, 48 L. 1030, 24 Sup. Ct. 696, averment that plaintiff is resident of Delaware is sufficient averment of citizenship therein for purpose of federal jurisdiction, where testimony shows legal domicile therein.

Syl. 8 (VII, 63). Necessity for request to charge.

Approved in Steel Rail Sup. Co. v. Baltimore etc. Ry. Co., 130 Fed. 434, 64 C. C. A. 635, following rule.

Syl. 9 (VII, 64). Carrier selecting unsafe route liable.

Approved in Green Wheeler Shoe Co. v. Chicago etc. Ry. Co., 130 Iowa, 130, 106 N. W. 500, carrier negligently delaying shipment so that it is destroyed by flood, which would not have destroyed it except for delay, is liable.

8 Wall. 354-358, 19 L. 418, YOUNG v. MARTIN.

Syl. 2 (VII, 65). Exceptions must present distinct rulings.

Approved in Metropolitan R. R. Co. v. Macfarland, 195 U. S. 330, 49 L. 223, 25 Sup. Ct. 28, error in refusal of instructions not considered

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in absence of bill of exceptions, though transcript contains what purports to be instructions asked and refused, marked filed by clerk.

Syl. 5 (VII, 65). Replication to answer waives demurrer.

Approved in Berry v. Barton, 12 Okl. 224, 71 Pac. 1075, 66 L. R. A. 513, leave to amend waives error in sustaining demurrer to answer; Kingman & Co. v. Pixley, 7 Okl. 352, 54 Pac. 495, filing of amended petition waives error in sustaining demurrer.

8 Wall. 358-362, 19 L. 303, GILBERT v. UNITED STATES.

Syl. 2 (VII, 66). Contract with government official.

Cited in North Chicago St. R. Co. v. Chicago Union Tr. Co., 150 Fed. 628, arguendo.

8 Wall. 370-376, 19 L. 380, MOTTINGLY v. NYE.

Syl. 3 (VII, 67). Conclusiveness of judgment.

Approved in Salemonson v. Thompson, 13 N. D. 193, 101 N. W. 323, applying rule in action to try title by judgment creditor against alleged fraudulent grantee of debtor.

Syl. 5 (VII, 68). Grantor cannot impair rights under trust deed.

Approved in Lynch v. Burt, 132 Fed. 428, 67 C. C. A. 305, judgment against fraudulent grantor, rendered after conveyance, not conclusive on grantee as to existence or amount of debt at time of transfer.

8 Wall. 376-377, 19 L. 422, AVENDANO v. GAY.

Syl. 1 (VII, 68). Own error not assignable.

Approved in Francisco v. Chicago etc. R. Co., 149 Fed. 355, writ of error at suit of plaintiff to review nonsuit rendered at his request.

8 Wall. 377-393, 19 L. 463, THE BALTIMORE.

Syl. 6 (VII, 69). Damages for injury through collision.

Approved in The Loch Trool, 150 Fed. 432, denying right to recover for depreciation in value of vessel where she was repaired and rendered as strong as before and received original classification; The Rickmers, 142 Fed. 309, denying right to recover for permanent injury in addition to expense of repairs where all known injuries were repaired.

Syl. 7 (VII, 70). Collision—Damages for total loss.

Approved in The Mobila, 147 Fed. 883, following rule.

Syl. 9 (VII, 70). Collision—Damages avoidable by care.

Approved in The Ashbury Park, 147 Fed. 195, steamer causing dangerous swell not liable for sinking of barge some time afterward, caused by failure to keep her pumped out; The Reno, 134 Fed. 556, 67 C. C. A. 479, where owner had vessel raised and repaired without

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ascertaining whether she was worth putting in as good condition as before collision, amount so expended is not measure of damages.

8 Wall. 393-397, 19 L. 467, BRADLEY v. RHINES.

Syl. 2 (VII, 71). Federal suit by assignee.

Approved in Kolze v. Hoadley, 200 U. S. 83, 50 L. 381, 26 Sup. Ct. 220, applying rule to suit to foreclose trust deed; Utah-Nevada Co. v. DeLamar, 133 Fed. 121, 66 C. C. A. 179, applying rule to suit by assignee or oral contract to recover money due thereon.

8 Wall. 397-420, 19 L. 437, TRAVELERS' INS. CO. v. MOSLEY.

Syl. 4 (VII, 73). Evidence of declaration as to physical condition.

Approved in Holloway v. Kansas City, 184 Mo. 39, 82 S. W. 94, physician testifying as expert cannot give opinion as to cause of injury based on history of case as he learned it from plaintiff's statements while treating her.

Syl. 5 (VII, 74). Res gestae—Declarations as to bodily injury.

Approved in Sprinkle v. United States, 141 Fed. 816, 817, on trial of defendants jointly indicted for defrauding government of revenue taxes, statements by defendants not on trial are admissible when part of res gestae; The San Rafael, 141 Fed. 279, admitting oral declarations of one alleged to have been drowned by sinking of vessel, as to his intention to become passenger thereon; Guild v. Pringle, 130 Fed. 422, 423, 64 C. C. A. 621, declaration by man fatally injured by falling into excavation that there was no light there is inadmissible; Union etc. Surety Co. v. Mondy, 18 Colo. App. 397, 71 Pac. 677, where there was evidence of insured's injured condition other than his declarations, declarations as to cause of injury made immediately after occurrence are admissible; Rothrock v. Cedar Rapids, 128 Iowa, 254, 103 N. W. 476, admitting declarations of injured person as to manner in which and place at which injuries sustained made on arrival at home half hour after injury; Pledger v. Chicago etc. Ry. Co., 69 Neb. 461, 95 N. W. 1058, upholding exclusion of declaration in answer to question of one injured that he was on train and that brakeman pushed him off; Murray v. Boston etc. R. R., 72 N. H. 37, 101 Am. St. Rep. 660, 54 Atl. 292, 61 L. R. A. 495, admitting declarations of one within two minutes after he was run over and while lying between planks with legs cut off that it happened from his falling over planks; Merrell v. Dudley, 139 N. C. 59, 51 S. E. 778, in action for malicious prosecution evidence of declaration by defendant to magistrate on applying for warrant for plaintiff's arrest for stealing shovel that when shovel found in plaintiff's possession latter said, "To hell with the shovel"; Puls v. Grand Lodge A. O. U. W., 13 N. D. 572, 102 N. W. 169, admitting spontaneous declarations of deceased to

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attendants as to cause of illness, due to poison, from which he was then suffering.

Distinguished in Ross-Lewin v. Germania L. Ins. Co., 20 Colo. App. 271, 78 Pac. 308, in action on life policy by assignee, declarations of assured after assignment, tending to show intention to commit suicide, are inadmissible when not part of res gestae; Regnier v. Territory, 15 Okl. 661, 82 Pac. 511, where person shot from ambush asked brother if he knew who did it, and brother answered one of them was A, to which deceased replied, "Yes, and other was B," conversation inadmissible.

8 Wall. 430-439, 19 L. 495, HOME OF THE FRIENDLESS v. ROUSE.

Syl. 1 (VII, 78). Statute incorporating society—Tax exemption.

Approved in Powers v. Detroit etc. Ry. Co., 201 U. S. 559, 50 L. 866, 26 Sup. Ct. 556, upholding contract between state and railroad exempting railroad from taxation other than prescribed in certain statute; Hamilton Nat. Bank v. American Loan etc. Co., 66 Neb. 77, 92 N. W. 192, arguendo.

Syl. 3 (VII, 79). Legislative charter exempting from taxation.

Approved in Powers v. Detroit etc. Ry. Co., 201 U. S. 558, 50 L. 865, 26 Sup. Ct. 556, upholding contract between state and railroad exempting railroad from taxation other than prescribed in certain statute.

Syl. 6 (VII, 79). Consideration—Power to exempt from taxation.

Cited in Heerwagen v. Crosstown St. Ry. Co., 179 N. Y. 104, 71 N. E. 730, arguendo.

Distinguished in Rochester v. Rochester Ry. Co., 182 N. Y. 116, 74 N. E. 958, 70 L. R. A. 773, immunity from contribution to expense of new pavements conferred by Laws 1869, p. 54, c. 34, on street railway, was mere gratuity revocable at pleasure.

8 Wall. 489-491, 19 L. 472, PARISH v. UNITED STATES.

(VII, 87.) Miscellaneous. Cited in Chisholm etc. Mfg. Co. v. U. S. Canopy Co., 111 Tenn. 211, 77 S. W. 1064, on question of profits as element of damages.

8 Wall. 498-507, 19 L. 476, KENNEDY v. GIBSON.

Syl. 2 (VII, 87). National bank receiver is instrument of comptroller.

Approved in Fish v. Olin, 76 Vt. 124, 125, 56 Atl. 533, 534, receiver of national bank may sue at law in own name in state courts.

Syl. 3 (VII, 88). Enforcement of bank stockholder's liability.

Approved in Christopher v. Norvell, 201 U. S. 222, 50 L. 735, 26 Sup. Ct. 502, coverture of legatee of national bank shares when she

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received certificate of stock is no defense to personal judgment for amount of assessment, irrespective of local law; Rankin v. Barton, 199 U. S. 232, 50 L. 166, 26 Sup. Ct. 29, reversing 69 Kan. 631, 634, 77 Pac. 531, 532, and holding state statute of limitations does not begin to run against right to enforce national bank stockholder's liability until assessment by comptroller; McClaine v. Rankin, 197 U. S. 159, 49 L. 705, 25 Sup. Ct. 410, personal liability of stockholders in national bank for debts of bank not contract liability under statutes of limitation; Bennett v. Thorne, 36 Wash. 270, 78 Pac. 941, 68 L. R. A. 113, under Const., art. 12, § 11, action against stockholders for additional liability accrues in bank's insolvency and is barred in six years.

Syl. 7 (VII, 90). National bank creditors' remedy is through comptroller.

Distinguished in Boyd v. Schneider, 131 Fed. 227, 65 C. C. A. 209, 70 L. R. A. 264, depositors in national bank may sue directors for negligently permitting its officers to loan bank's assets in violation of banking act.

Syl. 10 (VII, 92). Statutes permitting suits against national banks.

Approved in United States v. Raisch, 144 Fed. 489, Rev. St., § 5424, prohibits felonious making of certificate of naturalization by one other applicant or his witnesses; Rankin v. Herod, 130 Fed. 390, under Comp. St. 1901, p. 514, circuit court has jurisdiction over equity suit by national bank receiver where amount involved exceeded $500.

8 Wall. 513-533, 19 L. 426, CARPENTER v. DEXTER.

Syl. 3 (VII, 94). Certificates of acknowledgment not technically voided.

Approved in Trerise v. Bottego, 32 Mont. 250, 108 Am. St. Rep. 521, 79 Pac. 1059, certificate of acknowledgment of mortgage by husband and wife is sufficient to change notice though word "he" instead of "they" is used. See 108 Am. St. Rep. 530, 532, notes.

Syl. 4 (VII, 95). Aider of defective certificate of acknowledgment.

See 108 Am. St. Rep. 557, note.

Syl. 5 (VII, 96). Acknowledgment—Statement of venue.

See 108 Am. St. Rep. 544, note.

Syl. 8 (VII, 96). Proper acknowledgment requisite to recordation.

Approved in National etc. Co. v. New Columbus etc. Co., 129 Fed. 116, 122, 63 C. C. A. 616, applying rule to registration of assignment of patent.

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8 Wall. 533-556, 19 L. 482, VEAZIE BANK v. FENNO.

Syl. 4 (VII, 97). State agencies not taxable by government.

Distinguished in South Carolina v. United States, 199 U. S. 459, 50 L. 269, 26 Sup. Ct. 110, holding government may exact revenue license from dispensing agent of state which has taken charge of liquor business.

Syl. 6 (VII, 98). Tax not void because oppressive.

Approved in McCray v. United States, 195 U. S. 57, 49 L. 96, 24 Sup. Ct. 769, upholding Comp. St. 1901, p. 2228, as amended in 1902, taxing artificially colored oleomargarine; Kersey v. Terre Haute, 151 Ind. 474, 68 N. E. 1029, upholding ordinance taxing vehicles though omitting automobiles and street-cars; Gay v. Thomas, 5 Okl. 10, 46 Pac. 581, upholding act of 1895, taxing cattle in unorganized country in county to which country is attached for judicial purposes; Kettle v. Dallas, 35 Tex. Civ. 638, 80 S. W. 878, upholding act for creating improvement districts; dissenting opinion in Allen v. City of Davenport, 132 Fed. 227, 65 C. C. A. 641, 70 L. R. A. 264, majority holding where after letting of street-paving contract by city, abutting owners sued to enjoin work and assessment, and after work finished and city paid for work, court decided contract void, city cannot enforce lien on quantum meruit under curative statute.

8 Wall. 557-574, 19 L. 501, WILLARD v. TAYLOE.

Syl. 1 (VII, 99). Covenant in lease giving option to purchase.

Approved in King v. Raab, 123 Iowa, 634, 99 N. W. 306, following rule; Slaughter v. Mallet Land etc. Co., 141 Fed. 291, upholding validity of option in lease giving lessee preferential right to purchase; Watkins v. Robertson, 105 Va. 280, 5 L. R. A. (N. S.) 1194, 54 S. E. 37, enforcing specific performance of option for sale of stock at certain price if accepted within certain time in consideration of $1.

Syl. 2 (VII, 99). Specific performance—Option to purchase in lease.

Approved in Kentucky Distilleries etc. Co. v. Blanton, 149 Fed. 40, following rule; Woodward v. Davidson, 150 Fed. 843, granting specific performance of contract for sale of realty signed by vendor but not by purchaser.

Syl. 4 (VII, 100). Specific performance—Discretion.

Approved in Sharp v. West, 150 Fed. 461, where vendor repudiated alleged contract of sale before tender made, tender not condition precedent to suit for specific performance; Jones v. Byrne, 149 Fed. 461, denying specific performance of contract for purchase of land where there was breach of trust by purchaser; Kentucky Distilleries etc. Co. v. Blanton, 149 Fed. 40, applying rule where delay in clearing title due to fault of purchaser in not examining abstract;

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Meehan v. Nelson, 137 Fed. 737, 70 C. C. A. 165, granting specific performance of contract to convey interest in mining claim in consideration of complainant sinking three holes thereon to bedrock; Kane v. Luckman, 131 Fed. 621, denying specific performance of contract to purchase cows in exchange for land; Marks v. Gates, 2 Alaska, 526, 527, refusing to specifically enforce grubstake contract; Norris v. Clark, 72 N. H. 443, 57 Atl. 334, upholding refusal of specific performance of contract to convey interest in estate where consideration grossly inadequate; McClure v. Leaycraft, 183 N. Y. 42, 75 N. E. 963, denying injunction to enforce covenant against erection of apartment houses on land where greater part of limit of covenant had expired and such houses had been erected in immediate vicinity.

Syl. 5 (VII, 101). Conditional grant of specific performance.

Approved in King v. Raab, 123 Iowa, 635, 636, 99 N. W. 307, where five year lease contained option to purchase during term for specified price, and after lease city ordered street paved, specific performance granted on condition that lessee pay cost of paving.

Syl. 10 (VII, 102). Specific performance—Proper parties.

Approved in Cella v. Brown, 144 Fed. 755, 756, applying rule with reference to right of removal of cause.

Syl. 14 (VII, 103). Specific performance—Tender of depreciated notes.

Approved in San Juan v. St. John's Gas. Co., 195 U. S. 520, 49 L. 304, 25 Sup. Ct. 108, construing contract for street lighting in Porto Rico with reference to medium of payment.

8 Wall. 575-587, 19 L. 490, BUTZ v. CITY OF MUSCATINE.

Syl. 7 (VII, 105). Bondholder's remedies not taken away by repeal.

Approved in City of Ft. Madison v. Ft. Madison etc. Co., 134 Fed. 216, 67 C. C. A. 142, Iowa Code 1897, § 1305, providing for reduction of assessed value of property, is void in so far as it affects ability of city to meet water rent contract; Columbia Ave. Sav. Fund etc. Co. v. Dawson, 130 Fed. 175, grant by city to water company of right to lay pipes in streets and to supply city with water for term, cannot be impaired by construction of competing city works.

8 Wall. 603-639, 19 L. 513, HEPBURN v. GRISWOLD.

Syl. 7 (VII, 108). Statutes upheld unless invalidity clear.

Approved in United States v. Scott, 148 Fed. 433, holding void Comp. St. 1901, p. 3210, making it criminal for interstate carriers to compel employees to agree not to join labor unions.

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8 Wall. 650-672, 19 L. 320, MAGUIRE v. TYLER.

Syl. 7 (VII, 113). Incomplete land titles not for courts—Survey.

Approved in Territory v. Delinquent Taxpayers, 12 N. M. 175, 76 Pac. 318, imperfect Mexican grant not taxable before confirmation of survey by court of private land claims; United States v. Montana Lumber etc. Co., 196 U. S. 578, 49 L. 605, 25 Sup. Ct. 367, arguendo.

IX WALLACE.

9 Wall. 1-12, 19 L. 590, NEALE v. NEALES.

Syl. 1 (VII, 115). Amendment to fit evidence.

Approved in Bulte v. Igleheart Bros., 137 Fed. 502, 70 C. C. A. 76, upholding refusal of amendment of bill for infringement of patent; Kinney v. Craig, 103 Va. 167, 48 S. E. 867, where record in suit to recover debt secured by vendor's lien showed right of plaintiff to recover from any property owned by defendant at time of debt, and that he had given property in trust to children, bill amendable by allegation that deed made to defraud plaintiff; Ratliff v. Sommers, 55 W. Va. 37, 46 S. E. 715, arguendo.

Syl. 3 (VII, 116). Parol gift of land—Possession and improvements.

Approved in Halsell v. Renfrow, 14 Okl. 692, 78 Pac. 123, holding sending of surveyors on to land not taking of possession sufficient to take parol agreement for sale of lands out of statute.

9 Wall. 13-22, 19 L. 541, REESE v. UNITED STATES.

Syl. 2 (VII, 118). Change in contract releasing surety.

Approved in Zeigler v. Hallahan, 131 Fed. 208, 66 C. C. A. 1, where lease bound tenant to keep and pay rent for premises, and at end of term deliver them in good condition, modification by provision that in case of destruction rendering premises untenantable lease should be void releases surety; Orleans etc. Ry. Co. v. International Const. Co., 113 La. 413, 37 So. 11, applying rule where stipulation in building contract that bonds be deposited with trust company to be disposed of to raise money changed to another scheme; Stern v. Sawyer, 78 Vt. 12, 13, 112 Am. St. Rep. 894, 61 Atl. 38, sale of portion of leased premises with tenant's consent releases tenant's surety.

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9 Wall. 23-32, 19 L. 545, McGOON v. SCALES.

Syl. 2 (VII, 120). State law governs transfers.

Approved in Southern Pac. Co. v. Western Pac. Ry. Co., 144 Fed. 179, determining title to Oakland waterfront; Hubbard v. Goin, 137 Fed. 826, 70 C. C. A. 320, construing deed to daughter and children, with provision that she do not sell or encumber land, but retain it for use of herself and children forever, as not within Shelley's Case.

Syl. 4 (VII, 120). Collateral attack on attachment proceedings.

Approved in Harper v. Rankin, 141 Fed. 630, judgment in favor of national bank receiver, based on findings that defendant, while bank official, embezzled bank funds, is conclusive of character of indebtedness, on issue as to whether debt is released by discharge in bankruptcy; Logan v. Central Iron & Coal Co., 139 Ala. 555, 36 So. 731, where judgment in favor of administrator for wrongful death of intestate is satisfied, it is not collaterally attackable for fraud in action on same cause by administrator de bonis non.

9 Wall. 35-38, 19 L. 573, GUT v. STATE.

Syl. 2 (VII, 122). Ex post facto law—Changing venue.

Approved in Barry v. Truax, 13 N. D. 144, 99 N. W. 773, upholding Rev. Codes 1899, § 8122, providing for change of place of trial on motion of prosecution where fair trial cannot be had in original county; State v. Rooney, 12 N. D. 153, 95 N. W. 516, upholding Laws 1903, c. 99, substituting penitentiary for county jail as place of confinement pending execution, as applied to one convicted prior to passage of law.

9 Wall. 41-45, 19 L. 593, UNITED STATES v. DEWITT.

Syl. 1 (VII, 124). Federal regulation of state's internal police.

Approved in In re Heff, 197 U. S. 506, 49 L. 856, 25 Sup. Ct. 506, sale of liquor within state to Indian, to whom lands allotted under 24 Stat. 388, c. 119, not punishable under 21 Stat. 506, c. 109; Ex parte Dick, 141 Fed. 7, where government conveyed to individuals lands ceded to it by Indians, and municipality formed thereon, lands not subject to Rev. St., § 2139, prohibiting introduction of liquor into Indian country; Sanders v. Commonwealth, 117 Ky. 5, 111 Am. St. Rep. 221, 77 S. W. 359, 1 L. R. A. (N. S.) 932, upholding Ky. St. 1899, § 1274, forbidding sale of milk from cows fed on "still slop."

9 Wall. 50-56, 19 L. 594, CHICAGO v. SHELDON.

Syl. 1 (VII, 126). Franchise requiring street repairs—Assessments.

Distinguished in New York v. State Board of Tax Commrs., 199 U. S. 43, 105 Am. St. Rep. 703, 50 L. 77, 25 Sup. Ct. 715, upholding N. Y. Laws 1899, c. 712, imposing special franchise tax, as applied to street railway given franchise in consideration of payment of percentage of earnings; American Bonding Co. v. City of Ottumwa, 137

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Fed. 582, 70 C. C. A. 270, where street paving contract required contractor to keep same in repair, and experts decided that on account of bad material and workmanship entire resurfacing necessary, resurfacing was repairs.

Syl. 2 (VII, 127). Practical interpretation of contracts by parties.

Approved in Cleveland-Cliffs Iron Co. v. East Itasca Min. Co., 146 Fed. 239, construing contract relating to mining leases; Columbus etc. Ry. Co. v. Pennsylvania Co., 143 Fed. 762, construing agreement between railroads in contracts relating to joint use of terminal property; Uinta Tunnel etc. Co. v. Ajax etc. Min. Co., 141 Fed. 568, construing stipulation that lode claims of plaintiff were "located in compliance with law"; Northrup v. Richmond, 105 Va. 339, 53 S. E. 963, construing ordinance requiring street-car companies to sell school children's tickets at reduced rates as requiring sale of such tickets to students of business college.

Syl. 4 (VII, 129). Street railway franchise is contract.

Approved in Blair v. Chicago, 201 U. S. 475, 50 L. 832, 26 Sup. Ct. 427, construing Ill. Act, Feb. 6, 1865, with reference to extension of corporate life of street railway created by acts of 1859 and 1861.

9 Wall. 76-83, 19 L. 597, SMITH v. MORSE.

Syl. 2 (VII, 134). Arbitration decision conclusive.

Approved in Roberts etc. Shoe Co. v. Westinghouse etc. Mfg. Co., 143 Fed. 224, holding where contract provided for reference of questions to engineer, latter's decision is conclusive.

9 Wall. 83-89, 19 L. 574, UNITED STATES v. KEEHLER.

Syl. 4 (VII, 136). Official bonds—Robbery of funds no defense.

Approved in Van Trees v. Territory, 7 Okl. 363, 54 Pac. 498, fact that county treasurer deposited funds in solvent bank, which afterward failed, is no defense to action on bond.

Distinguished in Sweeney v. Commonwealth, 118 Ky. 922, 82 S. W. 642, state auditor not liable on bond for moneys paid on vouchers for militia expenses signed by persons wrongfully acting as governor and adjutant general.

9 Wall. 108-124, 19 L. 604, CHEEVER v. WILSON.

Syl. 7 (VII, 145). Federal courts judicially notice state laws.

See 113 Am. St. Rep. 873, note.

Syl. 8 (VII, 146). Conclusiveness of divorce decree—Finding of residence.

Approved in Haddock v. Haddock, 201 U. S. 570, 626, 50 L. 870, 893, 26 Sup. Ct. 525, mere domicile of one spouse does not give state court jurisdiction to render divorce against nonresident nonappearing defendant served by publication; Sheehan v. Farwell, 135 Mich. 207,

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97 N. W. 732, applying rule in action on foreign judgment. See 109 Am. St. Rep. 259, 268, note.

Syl. 9 (VII, 147). Wife may acquire separate domicile.

Approved in Haddock v. Haddock, 201 U. S. 571, 583, 893, 50 L. 870, 875, 895, 26 Sup. Ct. 525, mere domicile of one spouse does not give state court jurisdiction to render divorce against nonresident nonappearing defendant served by publication; Gordon v. Yost, 140 Fed. 81, wife deserted by husband may sue for alienation of affections in federal court of state other than that of husband's residence or citizenship; Clark v. Clark, 191 Mass. 131, 77 N. E. 703, wife separated from husband because of his adultery may sue for divorce in county other than that of his residence if she resides in county of suit. See 109 Am. St. Rep. 259, 267, note.

Syl. 10 (VII, 147). Jurisdiction—Divorce—Wife's separate domicile.

Approved in Blair v. Chicago, 201 U. S. 449, 50 L. 821, 26 Sup. Ct. 427, motive with which creditor invokes federal jurisdiction is immaterial; Toledo Traction Co. v. Cameron, 137 Fed. 56, 69 C. C. A. 28, where father and mother of infant plaintiff are divorced, and custody awarded to mother, his citizenship and domicile are determined by hers, for purpose of federal jurisdiction; dissenting opinion in Haddock v. Haddock, 201 U. S. 611, 50 L. 887, 26 Sup. Ct. 525, majority holding mere domicile of one spouse does not give state court jurisdiction to render divorce against nonresident nonappearing defendant served by publication.

9 Wall. 125-129, 19 L. 608, NORRIS v. JACKSON.

Syl. 1 (VII, 148). Trial to court—Special findings.

Approved in West v. Houston Oil Co., 136 Fed. 345, 69 C. C. A. 169, applying rule in trespass to try title; Anglo-American etc. Co. v. Lombard, 132 Fed. 734, 68 C. C. A. 89, applying rule in action to enforce stockholder's statutory double liability.

Syl. 2 (VII, 149). Conclusiveness of findings by court.

Approved in Streeter v. Sanitary Dist. of Chicago, 133 Fed. 126, 66 C. C. A. 190; Paul v. Delaware etc. R. Co., 130 Fed. 953, and York v. Washburn, 129 Fed. 566, 64 C. C. A. 132, all following rule.

Syl. 5 (VII, 151). Bill of exceptions on trial to court.

Approved in Paul v. Delaware etc. R. Co., 130 Fed. 954, 955, following rule; Fitzgerald v. Bassford, 142 Fed. 134, where action at law tried by court, and there was no special finding, assignment of error that court "erred in rendering judgment in favor of plaintiff," is insufficient; West v. Houston Oil Co., 136 Fed. 350, 69 C. C. A. 169, applying rule in trespass to try title where vital issue was genuineness of deed.

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Syl. 6 (VII, 152). Review in absence of special findings by court.

Distinguished in Streeter v. Sanitary Dist. of Chicago, 133 Fed. 129, 130, 66 C. C. A. 190, in cause tried by court where there is no special findings, ruling on request for holding that plaintiffs were entitled to recover amount claimed is not reviewable.

Syl. 7 (VII, 153). Bill of exceptions to review law rulings.

Approved in Paul v. Delaware etc. R. Co., 130 Fed. 956, following rule.

9 Wall. 129-145, 19 L. 651, THE GRAPESHOT.

Syl. 2 (VII, 154). Master's bond for supplies in foreign port.

Approved in The Wyandotte, 145 Fed. 324, 325, affirming 136 Fed. 473, where master of vessel in foreign port without funds was ready to sail, but could not hear from owners, draft to raise money for supplies creates maritime lien; The Worthington, 133 Fed. 725, 70 L. R. A. 353, 66 C. C. A. 555, one advancing money in foreign port to ship owner to be used to load vessel is entitled to maritime lien where it was loaned on credit of vessel; The Alcalde, 132 Fed. 578, denying maritime lien to bank advancing money to master at port of discharge to pay crew where receiver had been appointed for vessel; The Surprise, 129 Fed. 875, 64 C. C. A. 309, upholding lien for supplies and wharfage furnished vessel in foreign port on order of master, though ship navigated by charterer.

Syl. 5 (VII, 157). Maritime lien—Necessity for repairs.

Approved in The Wyandotte, 145 Fed. 326, affirming 136 Fed. 473, where, on libel on draft given for supplies, defendants claim supplies might have been obtained on personal credit of owners, burden was on owners to show they had credit in port where bond executed.

Syl. 6 (VII, 157). Proof of necessity for ship's supplies.

Approved in The Surprise, 129 Fed. 876, 883, 64 C. C. A. 309, upholding lien for supplies and wharfage furnished vessel in foreign port on order of master, though ship navigated by charterer.

9 Wall. 145, 146, 19 L. 771, LATHAM'S AND DEMING'S APPEAL.

Syl. 1 (VII, 158). Appellee cannot object to dismissal of appeal.

Approved in Darlington-Miller etc. Co. v. Hall, 4 Okl. 671, 46 Pac. 494, where appellant, on appeal from judgment of probate court, has appeal dismissed in district court, latter court cannot, on motion of appellee, set aside order of dismissal.

9 Wall. 146-156, 19 L. 610, THE JOHNSON.

Syl. 2 (VII, 158). Navigators must observe navigation rules.

Approved in The Sitka, 132 Fed. 865, holding steamer leaving anchorage liable for collision for failure to keep efficient lookout and for failure to give signal required by rules on leaving berth.

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9 Wall. 161-175, 19 L. 629, THE HARRIMAN.

Syl. 3 (VII, 160). Contracts—Contingencies excusing performance.

Approved in Reid v. Alaska Packing Assn., 43 Or. 436, 73 Pac. 340, contract to sell salmon packed in Alaska, fish to be "exactly like Puget Sound fancy sockeye," not void, though fish of that sort not found in Alaska; Pearlstine v. Westchester Fire Ins. Co., 70 S. C. 80, 49 S. E. 5, proofs of loss made and sworn to by agent, where facts are within his own knowledge, and principal is absent, do not violate stipulation in policy that insured shall make proof; Wheeling etc. Foundry Co. v. Wheeling etc. Iron Co., 58 W. Va. 67, 51 S. E. 131, under contract to make and deliver machinery at certain time or forfeit $50 per day, forfeiture not excused because party acted in good faith and with due diligence.

9 Wall. 187-197, 19 L. 668, FRISBEE v. WHITNEY.

Syl. 3 (VII, 162). Rights of pre-emptioner neither paying nor receiving certificate.

Approved in Oregon Short Line R. Co. v. Quigley, 10 Idaho, 781, 80 Pac. 403, 404, applying rule to grant of right of way to Utah etc. R. R. Co.; Graham v. Great Falls etc. Co., 30 Mont. 400, 402, 76 Pac. 810, 811, preferential right given successful contestant under Comp. St. 1901, p. 1392, was not vested right enforceable against government; McDonald v. Union Pac. R. Co., 70 Neb. 350, 97 N. W. 441, state court cannot compel conveyance of lands, subject to entry under homestead laws, to person who has been denied privilege of making entry by government officials; Wallace v. Adams, 143 Fed. 724, arguendo.

Syl. 5 (VII, 164). Title remains in government till payment.

Approved in Russian-American etc. Co. v. United States, 199 U. S. 578, 50 L. 316, 26 Sup. Ct. 157, value of improvements made on public lands in Alaska by mere trespasser are not recoverable from government in its selection of lands for fish culture station under 26 Stat. 1100, § 14; Tegarden v. Le Marchel, 129 Fed. 490, claim for improvements made before issuance of patent are not recoverable in ejectment; Nickelson v. Cameron Lumber Co., 39 Wash. 575, 81 Pac. 1061, one settling on unsurveyed lands cannot recover for cutting and removing of timber by another; State v. Ross, 39 Wash. 409, 81 Pac. 867, mere rejected applicant for lease of public land cannot institute mandamus to compel land commissioner to advertise lease of such land; dissenting opinion in Bernardy v. Colonial etc. Mtg. Co., 17 S. D. 653, 106 Am. St. Rep. 800, 98 N. W. 171, majority holding where entryman before patent conveyed by deed which was recorded, and after patent he mortgaged land, mortgagee acquired no interest as against grantee.

Distinguished in United States v. Oregon etc. R. Co., 133 Fed. 955, lands pre-empted but not paid for are exempted from railroad land

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grant of July 25, 1866; Reservation Bank v. Holst, 17 S. D. 246, 95 N. W. 933, 70 L. R. A. 799, where assignee of invalid lease from Indian allottee applied for homestead, which application was returned without action on same, and another took up residence on land and received receiver's receipt, former cannot recover crops planted by him and harvested by latter.

9 Wall. 203-237, 19 L. 638, THE STAR OF HOPE.

Syl. 3 (VII, 169). Collision—Sacrifice to avoid impending peril.

Approved in Minnesota S. S. Co. v. Lehigh Valley etc. Co., 129 Fed. 32, 63 C. C. A. 672, determining fault for collision between one steamer having tow and two others coming down channel abreast; Oceanic Steam Nav. Co. v. Aitken, 196 U. S. 596, 49 L. 613, 25 Sup. Ct. 317, arguendo.

9 Wall. 254-274, 19 L. 554, SWAIN v. SEAMENS.

Syl. 5 (VII, 173). Varying writing by parol—Statute of frauds.

Approved in American Fine Art Co. v. Simon, 140 Fed. 535, 537, written contract requiring plaintiff to prepare designs which if approved by defendant were to constitute order for work, is rescinded by oral agreement, after rejection of designs, that defendant should sign designs so that plaintiff could copyright them; McConathy v. Lanham, 116 Ky. 740, 76 S. W. 536, where written contract for sale of mineral rights provided for forfeiture if payment not made before certain time, parol agreement extending time is void; Cughan v. Larson, 13 N. D. 380, 100 N. W. 1090, refusing to specifically enforce parol modification of written contract for sale of land, though modification pertained only to performance of contract; Halsell v. Renfrow, 14 Okl. 689, 78 Pac. 122, applying rule where contract to sell land was modified by parol agreement to deduct certain sum for exclusion of certain lot from deed; Neppach v. Oregon etc. R. R. Co., 46 Or. 395, 80 Pac. 486, where vendor's title was in doubt and he requested postponement of further payments till title determined, to which vendee agreed, vendor cannot assert invalidity of latter agreement.

Syl. 6 (VII, 174). Estoppel by silence.

Approved in Marine Iron Wks. v. Weiss, 148 Fed. 153, owner of boat which was contracted to be of certain maximum draft is estopped to reject it for exceeding draft where he was present during its building and knew it would exceed draft, but said nothing; Alston v. Connell, 140 N. C. 493, 53 S. E. 295, request of postponement of tender of price in execution of contract for option for sale of land estops party from setting up statute of frauds; Globe Nav. Co. v. Maryland Casualty Co., 39 Wash. 309, 81 Pac. 830, applying rule in action on indemnity bond.

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9 Wall. 274-282, 19 L. 658, THE JUSTICES v. MURRAY.

Syl. 1 (VII, 175). Seventh amendment applies to state court juries.

Approved in Gunn v. Union R. R. Co., 27 R. I. 324, 62 Atl. 120, upholding R. I. Gen. Laws 1896, c. 251, § 11, authorizing supreme court to direct judgment without further trial by jury.

9 Wall. 282-290, 19 L. 576, PUBLIC SCHOOLS v. WALKER.

Syl. 2 (VII, 177). Limitation statute is one of repose.

Approved in Lynchburg etc. Mill Co. v. Travelers' Ins. Co., 140 Fed. 722, limitation for bringing suit as provided in insurance policy begins to run on clear announcement by company of its refusal to settle.

9 Wall. 290-294, 19 L. 712, BURNETT v. CALDWELL.

Syl. 2 (VII, 178). Ejectment on vendee's default in payment.

See 107 Am. St. Rep. 724, note.

Syl. 3 (VII, 178). Notice to quit to vendee in default unnecessary.

See 107 Am. St. Rep. 726, note.

9 Wall. 295-298, 19 L. 694, LOBRANO v. NELLIGAN.

Syl. 1 (VII, 178). Statute permitting guardian to sell.

Approved in State v. Bryan, 50 Fla. 363, 39 So. 951, upholding Laws 1905, c. 5384, abolishing certain schools and colleges.

9 Wall. 298-315, 19 L. 579, THE SECRETARY OF THE INTERIOR v. McGARRAHAN.

Syl. 3 (VII, 179). No mandamus to control discretion.

Approved in Beebe v. Commissioner of State Land Office, 137 Mich. 49, 100 N. W. 129, mandamus does not lie to review determination of State Land Commissioner under Act No. 107, p. 154 of 1899, requiring him to issue certificate of homestead entry when in his judgment application is made in good faith; Barnes v. Wilson County Commrs., 135 N. C. 40, 47 S. E. 742, denying mandamus to compel county board to issue liquor license; Wilbourne v. Baldwin, 5 Okl. 280, 47 Pac. 1050, refusing to enjoin Indian agent from removing homestead applicant from lands prior to issuance of patent; Fitzgerald v. Keith, 5 Okl. 264, 48 Pac. 111, territorial courts cannot review action of Interior Department in its disposition of public lands prior to issuance of patent; dissenting opinion in Sproat v. Durland, 2 Okl. 52, 35 Pac. 888, majority holding in proceedings by homestead applicant to enjoin adverse claimant from interfering with possession, court may, on answer and cross-complaint, enjoin plaintiff from interfering with defendant's possession; Adams v. Couch, 1 Okl. 34, 35, 26 Pac. 1015, ejectment cannot be predicated on receiver's duplicate receipt; Wilson v. Cox, 73 S. C. 400, 53 S. E. 613, mandamus does not lie to compel dispenser to operate dispensary where, in order to do so, court would set aside election against dispensary; Laramie Nat. Bank v. Steinhoff,

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11 Wyo. 307, 71 Pac. 994, in action by one in possession of land claiming under certificate of purchase, where no patent has issued, court cannot determine title. See 98 Am. St. Rep. 874, note.

Syl. 6 (VII, 180). Mandamus to officer abates on resignation.

Approved in State v. Board of State Canvassers, 32 Mont. 15, 17, 79 Pac. 402, 403, where mandamus proceeding has abated because of expiration of term of office of official against whom directed, it will be dismissed on court's own motion; Holdermann v. Schane, 56 W. Va. 15, 48 S. E. 514, where, when mandamus to compel mayor and councilmen to reconvene as canvassing board was issued, their terms had expired, writ cannot be used against successors.

9 Wall. 315-326, 19 L. 714, LYNCH v. BERNAL.

Syl. 4 (VII, 182). Public lands—Doctrine of relation.

Approved in United States v. Detroit Timber etc. Co., 200 U. S. 335, 50 L. 505, 26 Sup. Ct. 282, protecting bona fide purchaser from patentee without notice of entryman's fraud, though purchaser acquired interest in lands under contract for standing timber prior to issuance of patent; United States v. Anderson, 194 U. S. 399, 48 L. 1039, 24 Sup. Ct. 716, government cannot retain, as against grantee of lands within indemnity limits, money collected for removal of stone from land between selection of lands and approval of selection; Peyton v. Desmond, 129 Fed. 12, 63 C. C. A. 651, homestead patentee may recover value of timber wrongfully cut and removed from land between initiation of claim and issuance of patent.

9 Wall. 339-353, 19 L. 696, BIGELOW v. FORREST.

Syl. 6 (VII, 187). Decree of sale of remainder.

Approved in Turner v. Barraud, 102 Va. 332, 46 S. E. 322, decree of sale of remainder is void where issues did not involve interests of remainderman.

Distinguished in Clevenger v. Figley, 68 Kan. 707, 75 Pac. 1004, judgment of district court on foreclosure of mortgage given by owner jointly with guardian of insane wife deciding issue as to whether premises were homestead or not at time of mortgage is not collaterally attackable.

9 Wall. 353-364, 19 L. 701, FIRST NATIONAL BANK v. COMMONWEALTH OF KENTUCKY.

Syl. 1 (VII, 188). Tax on shares not tax on capital.

Approved in People's Sav. Bank v. Layman, 134 Fed. 638, fact that bank's assets going to make up value of shares consists of government bonds does not entitle bank to deduction of such amount from assessment under Iowa Code, § 1322, assessing savings banks on shares; Stroh v. Detroit, 131 Mich. 116, 90 N. W. 1032, shares in foreign corporation, when its property is located and taxable here, are exempt

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from taxation under statutes; Old Nat. Bank v. State, 58 W. Va. 562, 52 S. E. 495, government bonds held by national bank as part of its capital not taxable under state authority; First Nat. Bank v. Douglas Co., 124 Wis. 21, 22, 102 N. W. 317, 318, real estate belonging to national bank which is acquired with and constituting part of its capital is exempt from taxation.

Syl. 3 (VII, 192). Requiring national bank to pay stockholder's tax.

Approved in Carstairs v. Cochran, 193 U. S. 16, 48 L. 597, 24 Sup. Ct. 318, upholding Md. Laws 1892, c. 704, as amended in 1900, requiring owners of bonded warehouses to pay taxes on liquors stored and giving them lien on property therefor; Commonwealth v. Citizens' Nat. Bank, 117 Ky. 955, 80 S. W. 160, upholding Acts 1900, p. 65, c. 23, relating to taxation of national bank shares.

Syl. 4 (VII, 192). State regulation of federal instrumentalities.

Approved in Hibernia Sav. etc. Soc. v. San Francisco, 200 U. S. 314, 50 L. 496, 26 Sup. Ct. 265, treasury checks for interest accrued on government bonds are taxable by state in hands of owner; Covington v. First Nat. Bank, 198 U. S. 111, 49 L. 969, 25 Sup. Ct. 562, holding Ky. Act March 21, 1900, making national banks liable for taxes for past years on capital stock, is void, where previously national banks not required to return shares held outside of state; Corry v. Baltimore, 196 U. S. 475, 103 Am. St. Rep. 371, 49 L. 561, 25 Sup. Ct. 297, upholding Md. Code Pub. Gen. Laws, art. 81, imposing on nonresident stockholder in domestic corporation personal liability for taxes on his stock enforceable by personal action by corporation; State v. Shryack, 179 Mo. 440, 78 S. W. 812, under Laws 1895, p. 242, real estate of banks must be assessed to corporation, the personalty not at all, and shares in names of stockholders; Cogswell v. Second Nat. Bank, 76 Conn. 254, 56 Atl. 575, upholding appointment of receiver for national bank; State v. Fleming, 70 Neb. 538, 97 N. W. 1068, upholding Laws 1903, c. 73, taxing insurance companies.

Distinguished in Knoxville Traction Co. v. McMillan, 111 Tenn. 525, 77 S. W. 666, 65 L. R. A. 296, holding void Acts 1903, p. 599, c. 257, making railroad leasing advertising privilege liable for tax on business of advertising in cars.

9 Wall. 364-370, 19 L. 734, JONES v. BOLLES.

Syl. 1 (VII, 194). Equity jurisdiction over fraud.

Approved in Levi v. Mathews, 145 Fed. 154, federal court at law cannot entertain defense setting up fraud in procuring contract sued on; Parker v. Black, 143 Fed. 561, bankruptcy trustee may sue in equity to recover payment made by bankrupt to creditor as voidable preference; Manning v. Berdan, 135 Fed. 161, upholding jurisdiction of bill to enjoin action at law on note obtained by fraud, and to cancel same.

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Distinguished in General Elec. Co. v. Westinghouse Elec. & Mfg. Co., 144 Fed. 466, denying injunction to restrain violation of contract for manufacture and sale of goods which provided penalty for violation thereof.

Syl. 3 (VII, 195). Proper parties—Cancellation of corporation's agreement.

See 97 Am. St. Rep. 46, note.

Syl. 4 (VII, 195). Equity—Allegations showing jurisdiction.

Approved in Wood v. Deskins, 141 Fed. 507, where there is no controversy between one joint vendor and purchaser who has dispute with others as to rights under contract, first vendor who refused to join suit and was made defendant cannot be aligned as complainant to defeat federal jurisdiction.

Distinguished in Shewalter v. Lexington, 143 Fed. 166, denying federal jurisdiction over suit to quiet title as against street improvement certificates amounting to less than $2,000.

9 Wall. 387-394, 19 L. 736, BUSHNELL v. KENNEDY.

Syl. 3 (VII, 196). Federal suit by assignee.

Distinguished in Kolze v. Hoadley, 200 U. S. 82, 85, 50 L. 380, 382, 26 Sup. Ct. 220, suit to foreclose trust deed cannot be maintained in federal court unless assignor could sue therein, though bill prays cancellation of release for fraud; Utah-Nevada Co. v. De Lamar, 133 Fed. 119, 66 C. C. A. 179, suit by assignee of oral contract to recover money due thereon cannot be brought in federal court unless assignor could sue therein.

Syl. 5 (VII, 198). Defendant removing suit on assigned cause.

Approved in Greevy v. Jacob Tome Institute, 132 Fed. 409, where state court acquired jurisdiction of suit by attachment against foreign corporation under state statute, federal court had jurisdiction on removal by defendant; Finley v. Chamberlin, 46 Fla. 587, 35 So. 3, applying rule to change of venue for disqualification of judge.

9 Wall. 394-408, 19 L. 757, NOONAN v. BRADLEY.

Syl. 1 (VII, 198). Foreign administrator cannot sue.

Approved in Brooks v. Southern Pac. Co., 148 Fed. 997, personal representative of decedent qualified in one state cannot sue in another for tort under state statute permitting action by foreign administrator for debts due decedent; Graham v. Lybrand, 142 Fed. 111, applying rule to action by foreign administrator to compel resident executor to turn over to him assets of estate.

Distinguished in Moore v. Petty, 135 Fed. 673, 68 C. C. A. 306, executor may sue in another state to recover from agent employed by him proceeds of sale of realty belonging to estate.

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Syl. 8 (VII, 201). Ambiguities construed against party preparing bond.

Approved in Hildreth v. Duff, 143 Fed. 140, construing contract of employment to perfect certain machine as not binding employee to assign patent for essentially different machine.

9 Wall. 409-414, 19 L. 704, THE MAYOR v. LORD.

Syl. 6 (VII, 204). Mandamus to compel tax to pay bonds.

Approved in Theis v. Commrs. of Washita County, 9 Okl. 653, 60 Pac. 508, where county commissioners issued bridge warrants in accordance with statute, and failed to make tax levy to liquidate warrants, remedy of holders is mandamus and not action to recover money. See 105 Am. St. Rep. 216, 217, note.

9 Wall. 415-419, 19 L. 732, SUPERVISORS v. DURANT.

Syl. 1 (VII, 204). Mandamus to compel tax to pay judgment.

Approved in Theis v. Commrs. of Washita County, 9 Okl. 653, 60 Pac. 508, where county board issued bridge warrants in accordance with statute and failed to make tax levy to liquidate them, mandamus and not action to recover money is remedy of holder.

Syl. 2 (VII, 205). State injunction as barring federal mandamus.

See 105 Am. St. Rep. 216, 217, note.

9 Wall. 435-461, 19 L. 772, THE MAGGIE HAMMOND.

Syl. 7 (VII, 209). Rules of maritime law.

See 113 Am. St. Rep. 883, note.

Syl. 15 (VII, 210). Fear of ice justifying delay in transportation.

Approved in Philadelphia etc. Ry. Co. v. Peale, Peacock & Kerr, 135 Fed. 608, starting on voyage while there was floating ice in river which later injured barge and caused delay, not negligence.

9 Wall. 461-467, 19 L. 739, PHOENIX INSURANCE CO. v. COPELIN.

Syl. 3 (VII, 211). Unreasonable delay in repairs by insurer.

Approved in Hume v. Frenz, 150 Fed. 508, applying rule where stranded vessel temporarily repaired by insurer, who five months later permanently repaired her and sold her for repairs.

9 Wall. 477-486, 19 L. 725, THE CITY OF KENOSHA v. LAMSON.

Syl. 9 (VII, 216). Interest coupons not severed till paid.

Approved in Wright v. East Riverside Irr. Dist., 138 Fed. 322, 326, where bonds issued under Cal. St. 1877, p. 34, c. 34, were prepared and coupons lithographed with name of then secretary of district, but not delivered for eighteen months, and successor of secretary signed them, but predecessor's signature on coupons not changed, bonds were void.

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9 Wall. 486-500, 19 L. 621, INGLE v. JONES.

Syl. 7 (VII, 218). Further time to take testimony discretionary.

Approved in Long v. Anderson, 48 Fla. 289, 37 So. 220, it is abuse of discretion to refuse further time to take testimony where defendant prevented from taking testimony by absence of master in chancery; Maxwell v. Jacksonville Loan etc. Co., 45 Fla. 457, 34 So. 265, arguendo.

9 Wall. 501-504, 19 L. 762, HOE v. WILSON.

Syl. 4 (VII, 219). No decree unless indispensable parties present.

Approved in Florida Land etc. Co. v. Anderson, 50 Fla. 513, 39 So. 396, following rule.

9 Wall. 517-521, 19 L. 744, THE KEOKUK.

Syl. 2 (VII, 222). No lien to cargo owner till delivery.

Approved in Guffey v. Alaska etc. S. S. Co., 130 Fed. 274, 64 C. C. A. 517, where at time goods delivered at wharf under bill of lading reciting goods to be shipped on board ship then at port, complainant knew ship at sea, and goods never delivered to ship, vessel not liable to lien for breach of contract. See 105 Am. St. Rep. 350, note.

9 Wall. 544-554, 19 L. 763, MICHIGAN BANK v. ELDRED.

Syl. 8 (VII, 226). Notes—Authorization to fill blanks.

Approved in Mechanics' Bank v. Chardavoyne, 69 N. J. L. 259, 101 Am. St. Rep. 701, 55 Atl. 1081, bank receiving from A, without notice of infirmity, note, in payment of debt due from him to bank, which A's wife had indorsed in blank for him to discount for her benefit, is bona fide holder.

9 Wall. 554-560, 19 L. 584, UNITED STATES v. ADAMS.

Syl. 2 (VII, 227). Correction on appeal of mistake in findings.

Approved in dissenting opinion in State v. Marsh, 134 N. C. 203, 47 S. E. 13, 67 L. R. A. 179, majority granting certiorari to correct record where appeal from conviction for rape reversed because indictment as shown by record failed to allege want of consent, whereas indictment did in fact contain such allegation.

9 Wall. 560-567, 19 L. 560, HORNTHALL v. THE COLLECTOR.

Syl. 5 (VII, 229). No costs on dismissal for want of jurisdiction.

Approved in Sena v. United States, 147 Fed. 490, where appellate court is without jurisdiction of criminal appeal, it cannot direct marshal to deliver prisoner to warden to carry out sentence.

9 Wall. 567-575, 19 L. 748, THE ASSESSOR v. OSBORNE.

Syl. 7 (VII, 230). Repeal of law conferring jurisdiction.

Approved in United States v. Sena, 12 N. M. 414, 78 Pac. 62, repeal of Laws 1901, p. 190, c. 99, deprived supreme court of jurisdiction

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over criminal appeals not taken during term at which judgment rendered; Terry v. McClung, 104 Va. 601, 52 S. E. 356, under Acts 1887-88, p. 68, c. 58, depriving county court of jurisdiction in road cases and conferring same on supervisors, pending proceedings lapsed.

9 Wall. 575-579, 19 L. 681, LITCHFIELD v. REGISTER AND RECEIVER.

Syl. 2 (VII, 231). Equitable jurisdiction over public lands.

Approved in Laramie Nat. Bank v. Steinhoff, 11 Wyo. 307, 71 Pac. 994, in action by one in possession of land under certificate of purchase against claimant under entry, court cannot determine title; dissenting opinion in Sproat v. Durland, 2 Okl. 52, 35 Pac. 888, majority holding, in proceedings by homestead applicant to enjoin adverse claimant from interfering with possession, court may, on answer and cross-complaint, enjoin plaintiff from interfering with defendant's possession.

Syl. 3 (VII, 232). Equity jurisdiction after land office decision.

Approved in Wilbourne v. Baldwin, 5 Okl. 276, 47 Pac. 1048, refusing to enjoin Indian agent from removing homestead applicant from lands prior to issuance of patent; Fitzgerald v. Keith, 5 Okl. 263, 48 Pac. 111, territorial courts cannot review action of Interior Department in its disposition of public lands prior to issuance of patent; Adams v. Couch, 1 Okl. 34, 35, 26 Pac. 1015, ejectment cannot be predicated on receiver's duplicate receipt.

9 Wall. 579-592, 19 L. 792, THOMPSON v. UNION PACIFIC R. R.

Syl. 5 (VII, 233). State tax on federal agent's property.

Approved in Baltimore Shipbuilding etc. Co. v. Baltimore, 195 U. S. 382, 49 L. 245, 25 Sup. Ct. 50, upholding tax on land conveyed to corporation for drydock purposes though government reserved right to free use of dock.

9 Wall. 592-603, 19 L. 683, MERRYMAN v. BOURNE.

Syl. 2 (VII, 235). Grantee in fee may deny vendor's title.

Approved in Oregon etc. R. R. Co. v. Quigley, 10 Idaho, 784, 80 Pac. 405, and Swain v. McMillan, 30 Mont. 441, 76 Pac. 946, both following rule; Scott v. Mineral Dev. Co., 130 Fed. 502, 64 C. C. A. 659, continuation of possession of tract under deed conveying whole tract but part of which only is entered, gives adverse title to whole as against one out of possession; Fountain v. Lewiston Nat. Bank, 11 Idaho, 469, 83 Pac. 510, arguendo.

9 Wall. 617-630, 19 L. 800, IRVINE v. IRVINE.

Syl. 1 (VII, 238). Estoppel by deed—After-acquired title.

Approved in Clark v. Sayers, 55 W. Va. 527, 47 S. E. 318, following rule; Weeks v. Wilkins, 139 N. C. 218, 51 S. E. 910, applying rule where infant on attaining majority failed to disaffirm deed.

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9 Wall. 659-661, 19 L. 807, DOWNHAM v. ALEXANDRIA.

Syl. 1 (VII, 243). Writ of error to inferior state court.

Cited in Kentucky v. Powers, 201 U. S. 38, 50 L. 650, 26 Sup. Ct. 387, arguendo.

9 Wall. 661-664, 19 L. 808, UNITED STATES v. ADAMS.

Syl. 1 (VII, 244). Certiorari on diminution of record.

Approved in Whitney v. Dick, 202 U. S. 139, 50 L. 966, 26 Sup. Ct. 584, circuit court of appeals cannot issue certiorari to review conviction in inferior federal court where only question is whether federal courts have jurisdiction over offense.

9 Wall. 665-672, 19 L. 767, THE QUICKSTEP.

Syl. 1 (VII, 245). Findings of fact by two courts.

Approved in The Inca, 148 Fed. 367, upholding findings on conflicting evidence as to liability of tug for grounding of tug.

Syl. 2 (VII, 245). Liability for tort—Contract of towage.

Approved in The Oceanica, 144 Fed. 304, towing vessel liable for injury to tow resulting from negligence notwithstanding contract that towing should be at tow's risk; The W. G. Mason, 142 Fed. 918, where two tugs of same owner were towing ship and master of leader directed movements of ship, but rear tug, as to own movements, was under control of own master, rear tug not liable in rem for stranding of tow through fault of other tug.

Syl. 5 (VII, 246). Collision—Tow in control of tug.

Approved in The Joseph Peene, 130 Fed. 490, holding tug liable for injuries to tow caused by floating ice.

Syl. 6 (VII, 246). Duty of tug to properly secure lines.

Approved in The Britannia, 148 Fed. 499, holding tug at fault for using hawser which was unsound, and not having more than one; The Inca, 148 Fed. 368, holding tug liable for grounding of tug on known mound of rocks and for injuries caused by pulling her off, instead of waiting for her to float with tide; Monongahela River etc. Co. v. O'Neil, 144 Fed. 79, holding tug liable for capsizing of towed dredger; Cotton v. Almy, 141 Fed. 362, upholding finding of negligence in towing houseboat between tug and loaded scows, thereby subjecting it to unnecessary strain; The Lyndhurst, 129 Fed. 844, holding tug liable for injury to tow from collision with moored vessel caused by towing line slipping.

Distinguished in The Lyndhurst, 147 Fed. 113, holding canal boat towed by tug at fault for collision where its master failed to properly secure towing line.

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9 Wall. 672-677, 19 L. 783, THE SYRACUSE.

Syl. 2 (VII, 247). Failure to slacken speed in meeting tow.

Approved in The Georgetown, 135 Fed. 858, holding steamer at fault for collision with barge in tow of tug; American S. S. Co. v. American S. B. Co., 129 Fed. 67, 63 C. C. A. 507, holding steamer at fault for collision while passing between meeting tows.

9 Wall. 677-681, 19 L. 810, INSURANCE CO. v. WEIDE.

Syl. 3 (VII, 247). Admissibility of account-books to prove value.

Approved in Grunberg v. United States, 145 Fed. 92, applying rule on issue as to contents and value of cases of imported goods alleged to have been entered at undervaluation through conspiracy.

9 Wall. 682-687, 19 L. 754, THE PORTSMOUTH.

Syl. 1 (VII, 249). Jettison of cargo—Fault of master.

Approved in Corsar v. Spreckels etc. Co., 141 Fed. 264, holding cargo improperly stowed, thereby rendering ship unseaworthy and vessel liable for jettison of part of cargo.

9 Wall. 740-743, 19 L. 586, WILKINS v. ELLETT.

Syl. 1 (VII, 252). Situs of personalty of decedent.

Approved in Hopkins' Appeal, 77 Conn. 652, 60 Atl. 660, exacting death duties under Rev. 1902, §§ 2367-2377, on personalty of resident decedent wherever situate; Hartley v. Hartley, 71 Kan. 693, 81 Pac. 505, damages recovered for death of Kansas resident by wrongful act committed in Iowa are disposed of by Iowa statute; Bates Machine Co. v. Norton Iron Works, 113 Ky. 379, 68 S. W. 425, where debtor is resident, fact that debt is about to be collected by creditor and money removed from state, not leaving sufficient to satisfy plaintiff's claim against creditor, is ground for attachment.

Syl. 3 (VII, 254). Payment to foreign domiciliary administrator.

Approved in O'Connor v. Root, 130 Iowa, 562, 107 N. W. 611, where administrator has collected all assets of estate of decedent, who was resident of this state, and all creditors are residents, creditor will be enjoined from applying for letters in another state.

9 Wall. 743-758, 19 L. 814, WALKER v. WALKER.

Syl. 1 (VII, 255). Separate maintenance contracts valid.

Approved in Baird v. Connell, 121 Iowa, 284, 96 N. W. 865, upholding separation agreement under which husband paid wife $1,100 for her interest in certain lands; Bailey v. Dillon, 186 Mass. 246, 71 N. E. 639, 66 L. R. A. 427, upholding separation agreement, through trustee, by which wife, in consideration of payments, agrees to release husband from liability for separate maintenance.

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Syl. 5 (VII, 256). Federal jurisdiction over administrations.

Approved in Schurmeier v. Connecticut etc. Ins. Co., 137 Fed. 45, 69 C. C. A. 22, determining limitation on contingent claims against estates under Minnesota statutes; Alice E. Min. Co. v. Blanden, 136 Fed. 254, applying rule to establishment of claim against administrator of deceased debtor; dissenting opinion in James v. Gray, 131 Fed. 415, 65 C. C. A. 385, majority holding loan by wife to husband from separate estate is provable against his bankrupt estate, irrespective of its enforceability under state law.

9 Wall. 758, 759, 19 L. 710, THE GUY.

Syl. 1 (VII, 257), Liens for supplies to vessel.

Approved in The Surprise, 129 Fed. 876, 64 C. C. A. 309, upholding lien for supplies and wharfage furnished ship in foreign port on order of master, though she is navigated by charterer, who is bound to make all disbursements.

9 Wall. 759-766, 19 L. 820, WATKINS v. UNITED STATES.

Syl. 3 (VII, 258). Credits allowed on officers' accounts.

Approved in United States v. Pierson, 145 Fed. 817, 818, applying rule in action on bond of Indian agent.

9 Wall. 766-779, 19 L. 822, BUTLER v. MAPLES.

Syl. 1 (VII, 259). General and special agency distinguished.

Approved in Moore v. Skyles, 33 Mont. 137, 82 Pac. 799, 3 L. R. A. (N. S.) 136, one to whom money order given by another to see if it was all right, and if so, to cash it, is special agent.

9 Wall. 788-804, 19 L. 566, PROVIDENCE RUBBER CO. v. GOODYEAR.

Syl. 8 (VII, 262). Process and product separate patent subjects.

Cited in Sanitas Nut Food Co. v. Voight, 139 Fed. 552, arguendo.

Syl. 10 (VII, 263). Extension of patent by commissioner conclusive.

Approved in Eastern Paper Bag Co. v. Continental Paper Bag Co., 142 Fed. 511, holding Liddell patent No. 558,969, for paper-bag machine, valid and infringed.

Syl. 13 (VII, 264). Time to object to omission of word "patented."

Approved in Pettibone etc. Co. v. Pennsylvania Steel Co., 134 Fed. 889, objection for failure to prove allegation, not denied, that machine was marked "patented" cannot be taken for first time on entry of decree.

Syl. 14 (VII, 265). Profits of infringer of patents.

Approved in Corbin v. Taussig, 137 Fed. 153, determining expenses to be offset from infringing profits where articles formed part of general business.

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9 Wall. 807-811, 19 L. 587, PROVIDENCE ETC. RUBBER CO. v. GOODYEAR ETC. RUBBER CO.

Syl. 2 (VII, 267). Cross-bill is auxiliary to original suit.

Approved in Gilmore v. Bort, 134 Fed. 661, 662, in suit for cancellation of bond to indemnify corporation and its treasurer for deposit of funds in bank, on ground of fraud in procurement, cross-bill by treasurer setting up defense against corporation does not entitle him to object to dismissal.

9 Wall. 812-816, 19 L. 829, BISCHOFF v. WETHERED.

Syl. 1 (VII, 268). Judgment on personal service out of jurisdiction.

Approved in Haddock v. Haddock, 201 U. S. 568, 50 L. 869, 26 Sup. Ct. 525, mere domicile in state of one spouse does not give state courts jurisdiction to render divorce against nonresident nonappearing defendant served by publication; Murray v. Strong, 2 Alaska, 519, judgment in Yukon Territory against resident of Alaska on personal notice served in Alaska is void.

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10 Wall. 1-15, 19 L. 870, THE BLACKWALL.

Syl. 4 (VII, 271). Salvage defined.

Approved in Spaulding v. Alaska Com. Co., 1 Alaska, 501, persons knowing barges driven on shore by wind at place designed by master, and reaching them ahead of owner's employees, and going aboard dryshod and attaching line to anchor ashore, are not salvors.

Syl. 8 (VII, 272). Amount of salvage, how determined.

Approved in The Chief, 147 Fed. 877, allowing $1,000 salvage for towing disabled tug worth $5,600, where she was in no great danger; The Lottie E. Hopkins, 133 Fed. 407, where fishing vessel valued at from $600 to $1,000 lost rudder and was drifting toward rocks in storm, tug towing ship to port entitled to $200 salvage.

Syl. 9 (VII, 272). Salvage not awarded on quantum meruit.

Approved in Spaulding v. Alaska Com. Co., 1 Alaska, 508, persons knowing barges driven ashore by wind at place designed by master, and reaching them ahead of owner's employees, and going aboard dryshod and attaching line to shore anchor, are not salvors.

10 Wall. 15-22, 19 L. 875, THE DAVIS.

Syl. 1 (VII, 273). Salvage of government property.

Approved in The John McCracken, 145 Fed. 707, vessels owned by port of Portland and used by it to improve harbor are not seizable

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in admiralty suit in rem; United States v. Cornell Steamboat Co., 202 U. S. 190, 50 L. 990, 26 Sup. Ct. 648, affirming 137 Fed. 457, 69 C. C. A. 603, and upholding federal jurisdiction over libel in personam for salvage on duties collected on sugar afterward saved from fire while on lighter in charge of customs officials; Walker v. United States, 139 Fed. 413, refusing recovery of payments made by government as compensation to marshal long after expiration of term of office; Rees v. United States, 134 Fed. 146, allowing salvage to crew of one of two government vessels for saving government property from wreck of other.

10 Wall. 33-38, 19 L. 882, BATES v. EQUITABLE INS. CO.

Syl. 3 (VII, 276). Policy indorsed payable to third person.

Approved in Atlas Reduction Co. v. New Zealand Ins. Co., 138 Fed. 505, 510, indorsement of policy as payable to A as his interest may appear does not waive condition against encumbrances.

10 Wall. 38-56, 19 L. 844, PEOPLE'S RAILROAD v. MEMPHIS RAILROAD CO.

Syl. 1 (VII, 277). Power to grant franchises not delegatable.

Approved in Govin v. Chicago, 132 Fed. 854, construing term of grant under Illinois Acts of 1859, 1861, and 1865, relating to Chicago city railways.

Syl. 4 (VII, 278). Consent by city to operation of street railroads.

Approved in Blair v. Chicago, 201 U. S. 460, 50 L. 826, 26 Sup. Ct. 427, construing terms of grant under Illinois Acts of 1859, 1861, and 1865, relating to Chicago city railways.

10 Wall. 68-91, 19 L. 839, TEXAS v. HARDENBERG.

Syl. 1 (VII, 278). Relief under general prayer.

Approved in Sprinkle v. Wellborn, 140 N. C. 177, 111 Am. St. Rep. 837, 52 S. E. 671, 3 L. R. A. (N. S.) 174, where vendee, who has obtained deed by fraud, has conveyed property to bona fide purchaser, in suit to cancel deed original grantor may have personal judgment against his grantee for profits of sale.

10 Wall. 117-126, 19 L. 866, STIMPSON v. WOODMAN.

Syl. 1 (VII, 281). Patents—Changes involving mechanical skill.

Approved in Daylight Glass Mfg. Co. v. American Pris. Light Co., 142 Fed. 457, Cummings patent No. 695,282, for machine for making prismatic glass, is void in view of prior art; North Jersey St. Ry. Co. v. Brill, 134 Fed. 584, 67 C. C. A. 380, Brill patents Nos. 627,898 and 627,900, for car trucks, are void in view of prior art.

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10 Wall. 129-133, 19 L. 884, WIGGINS v. BURKHAM.

Syl. 1 (VII, 282). Unobjected account becomes stated.

Approved in Sharp v. Behr, 136 Fed. 798, where statements of shipments of ore, as to which party entitled to royalties, were without specifications, and party had no figures with which to verify account rendered, failure to object not waiver of right to object; Ketchum v. Stetson etc. Mill Co., 33 Wash. 95, 73 Pac. 1127, account in which purchaser of logs listed them at what seller claimed was agreed price is conclusive evidence that price of logs had been agreed on, though account contained counterclaim.

10 Wall. 141-152, 19 L. 923, FIELD v. FARRINGTON.

Syl. 1 (VII, 286). Failure of principal to object to factor's delay.

Approved in McIntosh v. Merchant, 40 Wash. 480, 82 Pac. 754, where factor, unable to sell goods at principal's price, turned same over to another for sale and notified principal, latter's failure to object for six months is ratification.

10 Wall. 152-158, 19 L. 897, BANK OF THE REPUBLIC v. MILLARD.

Syl. 1 (VII, 287). Bank deposits belong to bank.

Approved in Burton v. United States, 196 U. S. 301, 49 L. 488, 25 Sup. Ct. 243, allegation of payment at St. Louis not supported by evidence that checks drawn on St. Louis bank were received in Washington and deposited in bank there; Bank of Blackwell v. Dean, 9 Okl. 631, 60 Pac. 228, determining whether or not deposit was special deposit entitled to priority on insolvency of bank; Guthrie Nat. Bank v. Gill, 6 Okl. 563, 54 Pac. 435, draft is not equitable assignment pro tanto of funds in hands of drawee to credit of drawer before acceptance.

Syl. 2 (VII, 289). Privity between drawer of check and bank.

Approved in dissenting opinion in Burton v. United States, 196 U. S. 309, 49 L. 491, 25 Sup. Ct. 243, majority holding allegation of payment at St. Louis not supported by evidence that checks drawn on St. Louis bank were received in Washington and deposited in bank there; Eastern Milling etc. Co. v. Eastern Milling etc. Co., 146 Fed. 762, holder of check has no right to priority of payment, on drawer's subsequent insolvency, from fund due from bank.

10 Wall. 176-192, 19 L. 909, MEMPHIS RAILROAD CO. v. REEVES.

Syl. 4 (VII, 296). Carriers—Act of God—Burden of proof.

Approved in Nashville etc. Ry. Co. v. Stone, 112 Tenn. 371, 79 S. W. 1036, following rule; Hunter v. Ricke, 127 Iowa, 111, 102 N. W. 827, applying rule where horse in charge of liveryman was burned in fire; Jones v. Minneapolis etc. Ry. Co., 91 Minn. 231, 97 N. W. 893, holding where cattle train caught in blizzard and cattle frozen, carrier not liable.

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Distinguished in Grier v. St. Louis etc. Ry. Co., 108 Mo. App. 570, 84 S. W. 159, in trover against carrier for failure to deliver goods, delivery by consignor and failure to deliver to consignee establishes prima facie case.

Syl. 6 (VII, 297). Carriers—Proximate cause—Loss by delay.

Approved in Green-Wheeler etc. Co. v. Chicago etc. Ry. Co., 130 Iowa, 124, 106 N. W. 498, and Moffatt Com. Co. v. Union Pac. Ry. Co., 113 Mo. App. 548, 88 S. W. 118, both following rule; Northern Pac. Ry. Co. v. Kempton, 138 Fed. 997, applying rule when cattle injured by blizzard and separate delays contributed to injury; Texas & P. Ry. Co. v. Coutourie, 135 Fed. 475, 68 C. C. A. 177, applying rule where cotton would not have been in sheds and burned but for delay in forwarding; Empire State etc. Co. v. Atchison etc. Ry. Co., 135 Fed. 142, where, owing to floods, carrier could not deliver cattle but sent them to another place, where they were put in yards which were afterward flooded by storms and cattle moved to prevent drowning, carrier not liable for loss; General Fire Extinguisher Co. v. Carolina etc. Ry. Co., 137 N. C. 283, 49 S. E. 210, applying rule where goods destroyed by fire; Hayes & Cooley, 13 N. D. 208, 100 N. W. 252, in action for breach of contract to thresh grain, loss of grain by exposure to storm is remote consequence.

10 Wall. 192-204, 19 L. 906, THE LULU.

Syl. 2 (VII, 301). Foreign port—Pledge of vessel's credit.

Approved in The New Brunswick, 129 Fed. 895, 64 C. C. A. 325, where place of business of corporation owning ship is at port in state other than that of its creation, master cannot impress lien on vessel in that port for supplies.

Syl. 4 (VII, 302). Burden to show necessity for vessel's credit.

Approved in The Wyandotte, 145 Fed. 325, 326, affirming 136 Fed. 473, where master of English vessel in American port drew draft to raise money for supplies, which was discounted at instance of ship's agents, discounters had lien on ship and burden was on owners to show they had personal credit; The Surprise, 129 Fed. 877, 64 C. C. A. 309, upholding lien for supplies and wharfage furnished vessel in foreign port on master's order, though navigated by charterer, who was to make all disbursements.

10 Wall. 204-218, 19 L. 941, THE KALORAMA.

Syl. 1 (VII, 303). Action in rem for maritime contract.

Approved in Bank of British N. A. v. Freights etc. of Hutton, 137 Fed. 538, 70 C. C. A. 118, where bank had maritime lien on freight of vessel for advances, it could enforce it by action in admiralty in rem, though it had equitable lien.

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Syl. 3 (VII, 304). Supplies in foreign port on ship's credit.

Approved in The Wyandotte, 145 Fed. 325, where master of English vessel in American port drew draft to raise money for supplies, which was discounted at instance of ship's agents, discounter had lien on ship; The Surprise, 129 Fed. 875, 876, 64 C. C. A. 309, upholding lien for supplies and wharfage furnished vessel in foreign port on master's order, though navigated by charterer, who was to make all disbursements.

Syl. 5 (VII, 305). Lien for supplies in foreign port.

Approved in The Worthington, 133 Fed. 725, 70 L. R. A. 353, 66 C. C. A. 555, applying rule where one advanced money in foreign port on credit of vessel to owner of vessel, who was without funds, to be used for loading vessel; The Surprise, 129 Fed. 876, 64 C. C. A. 309, upholding lien for supplies and wharfage furnished vessel in foreign port on master's order, though navigated by charterer, who was to make all disbursements.

Syl. 6 (VII, 305). State action for advances bars lien.

Distinguished in Northwestern Com. Co. v. Bartels, 131 Fed. 27, 28, 65 C. C. A. 263, where one entitled to maritime lien files claim in state court receivership proceedings and consented to sale of ship, and asserts priority of claim to proceeds, he is estopped to enforce lien in admiralty.

10 Wall. 218-224, 19 L. 895, BRAUN v. SAUERWEIN.

Syl. 1 (VII, 306). Suspension of limitations by statutory disability.

Approved in Alice E. Min. Co. v. Blanden, 136 Fed. 255, holding under Iowa statutes action on note given by decedent not barred where administration could not have been had earlier; Cobb v. Houston, 117 Mo. App. 653, 94 S. W. 301, statute of limitations is suspended during defendant's nonresidence.

10 Wall. 224-245, 19 L. 900, HORNSBY v. UNITED STATES.

Syl. 8 (VII, 308). Mexican grantee's interest, how devested.

Approved in Catron v. Laughlin, 11 N. M. 635, 72 Pac. 33, following rule.

10 Wall. 256-263, 19 L. 893, NEW ORLEANS R. R. v. MORGAN.

Syl. 1 (VII, 309). Affirmance where no error disclosed.

Cited in Cassatt v. Mitchell Coal & Coke Co., 150 Fed. 42, arguendo.

10 Wall. 273-299, 19 L. 915, SLAUGHTER-HOUSE CASES.

Syl. 7 (VII, 312). Appeal from injunctional order not stay.

Approved in Elliott v. Kuzek, 2 Alaska, 591, where, on dismissal after trial on merits, injunction pendente lite was dissolved, in action on injunction bond, plea setting up appeal from dismissal and giving of supersedeas bond is demurrable; State v. Superior Court, 39 Wash.

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117, 118, 109 Am. St. Rep. 862, 80 Pac. 1109, 1 L. R. A. (N. S.) 574, defendants restrained from operating shooting-gallery are not entitled, as matter of right, to supersede order pending appeal.

Distinguished in State v. Dearing, 180 Mo. 67, 79 S. W. 455, where trial court on merits dissolves injunction and dismisses bill, it may continue temporary injunction pending appeal.

10 Wall. 308-321, 19 L. 931, COOPER v. REYNOLDS.

Syl. 1 (VII, 315). Judgment—Collateral attack for errors.

Approved in Dye v. Crary, 12 N. M. 471, 78 Pac. 533, following rule; Vicksburg etc. R. Co. v. Tibbs, 112 La. 58, 36 So. 225, where appeal taken by administrator is dismissed by consent, fact that administrator was discharged prior to rendition of judgment of dismissal is not ground for collateral attack on judgment; Heid v. Ebner, 133 Fed. 158, 66 C. C. A. 222, averment in answer of title through execution sale, averring judgment sale and confirmation, is sufficient without setting up in detail proceedings relative to execution and sale; May v. Getty, 140 N. C. 320, 53 S. E. 79, where jurisdiction over nonresident obtained by attachment, judgment not collaterally attackable in so far as it affects attached property.

Syl. 2 (VII, 317). Meaning of jurisdiction.

Approved in Blevins v. Marledge, 5 Okl. 145, 47 Pac. 1069, where reference is made to three referees, two only of whom qualify, act, and report, report is valid.

Syl. 3 (VII, 318). Jurisdiction acquired by attachment and publication.

Approved in May v. Getty, 140 N. C. 318, 53 S. E. 78, where jurisdiction over nonresident obtained by attachment, sale under general execution issued on judgment is valid; Kerns v. McAulay, 8 Idaho, 565, 69 Pac. 540, where service on nonresident is made by publication and his property attached, personal judgment is valid only as against property attached; Brand v. Brand, 116 Ky. 791, 76 S. W. 870, 63 L. R. A. 206, upholding jurisdiction where property of nonresident was attached; Silver Camp Mining Co. v. Dickert, 31 Mont. 494, 78 Pac. 969, service of summons by publication on nonresident defendant does not warrant decree for specific performance of contract to convey land; Goodwin v. Claytor, 137 N. C. 230, 107 Am. St. Rep. 479, 49 S. E. 175, 69 L. R. A. 209, where service on nonresident was had by publication and garnishment of debt, plaintiff lost no lien on debt by taking judgment against defendant and garnishee; Salemonson v. Thompson, 13 N. D. 194, 101 N. W. 323, upholding judgment where property attached was alleged to have been transferred by debtor in fraud of creditors; Ireland v. Adair, 12 N. D. 33, 94 N. W. 767, judgment against nonresident served by publication is void where attachment return does not show delivery of copy of writ and of notice showing property attached to defendant.

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Distinguished in Parks Co. v. City of Decatur, 138 Fed. 554, municipal corporation is not suable by attachment in courts of another state.

Syl. 4 (VII, 320). Jurisdiction over person, how obtained.

Approved in Metropolitan Rubber Co. v. Place, 147 Fed. 94, decree in suit for dissolution of corporation barring all claims not presented does not conclude nonresident creditor not personally served from suing corporation on claim.

Syl. 5 (VII, 322). Levy of attachment requisite to action in rem.

Approved in Coyle Mercantile Co. v. Nix, 7 Okl. 270, 54 Pac. 470, affidavit on attachment omitting amount of debt, being amendable, lien of writ issued thereon is prior to that of junior attachment levied before amendment; dissenting opinion in Dye v. Crary, 12 N. M. 478, 479, 480, 78 Pac. 536, 537, majority holding property levied on under alias writ of attachment gives no jurisdiction over such property.

Distinguished in Dye v. Crary, 12 N. M. 473, 78 Pac. 534, property levied on under alias writ of attachment gives no jurisdiction over such property.

10 Wall. 327-334, 19 L. 935, JONES v. ANDREWS.

Syl. 1 (VII, 326). Citizenship appearing from bill.

Approved in Sun Printing etc. Assn. v. Edwards, 194 U. S. 383, 48 L. 1030, 24 Sup. Ct. 696, averment that plaintiff is resident of certain state regarded by appellate court as averment of citizenship, where evidence shows legal domicile therein.

Syl. 3 (VII, 327). Waiver of jurisdiction by motion to dismiss.

Approved in Wetzel etc. Ry. Co. v. Tennis Bros. Co., 145 Fed. 464, where in action by foreign corporation defendant demurred and answered, he cannot plead in abatement that plaintiff cannot sue because he has failed to comply with state laws.

Syl. 4 (VII, 327). Citizenship in ancillary proceedings.

Approved in O'Connor v. O'Connor, 146 Fed. 997, federal equity suit to set aside dismissal of law action being ancillary to action, service on defendants in bill who were parties to action may be made on them though they reside outside of district; Hatcher v. Hendrie etc. Supply Co., 133 Fed. 270, 68 C. C. A. 19, equity suit to enforce attachment lien obtained in former action in same court to subject attached property to judgment is maintainable irrespective of citizenship.

10 Wall. 334-339, 19 L. 946, THE FARRAGUT.

Syl. 1 (VII, 329). Collision—Absence of lookout.

Approved in The Pocomoke, 150 Fed. 197, 198, small launch having only navigator as lookout is not negligent.

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-363, 19 L. 955, MARBLE CO. v. RIPLEY.

I, 330). Restraining violation of copartner's rights.

hed in Lord v. Hull, 178 N. Y. 19, 102 Am. St. Rep. 484, , denying right of action by one partner for accounting her where no dissolution is sought.

I, 331). Specific performance discretionary.

in Sharp v. West, 150 Fed. 461, denying specific perform- ract for sale of land after three years' unexplained delay; ne, 149 Fed. 461, refusing specific performance of contract of land where there was violation of trust by attorney; pinion in Stewart v. Wright, 147 Fed. 346, majority per- very by one who was given double cross in known fake

II, 331). Specific performance—Subsequently developed

in Brewster v. Lanyon Zinc Co., 140 Fed. 806, upholding ease in consideration of $1.

II, 332). Specific performance of option contract.

in Brewster v. Lanyon Zinc Co., 140 Fed. 812, constru- with reference to forfeiture clauses; Ormsby v. Graham, 9, 98 N. W. 727, where purchaser knew at time of con- endors had no title and coupled with tender of price or good marketable title, he cannot compel specific per- delivery of such title; Harlow v. Oregonian Pub. Co., 78 Pac. 740, refusing specific performance of newspaper at instance of carrier.

ed in Kentucky Distilleries etc. Co. v. Blanton, 149 Fed. g contract by assignee for creditors of insolvent cor- sale of its realty, though he agreed to get directors that purchaser could elect his own board.

VII, 333). Specific performance—Contract imposing con- es.

in General Elec. Co. v. Westinghouse Elec. & Mfg. Co., 2, refusing specific performance of fifteen year contract, nplainant was to make and sell to defendant certain defendant was to sell to exclusion of all others; Taussig 42 Fed. 666, denying specific performance of contract sive right to sell patented goods in certain territory, h he agreed to push; Western Union Tel. Co. v. Penn- , 129 Fed. 869, 870, 64 C. C. A. 285, 68 L. R. A. 968, ecific performance of contract between railroad and tele- for construction and operation of telegraph line along 7; Marks v. Gates, 2 Alaska, 527, 530, refusing specific

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performance of contract to convey all properties which promisor may acquire in Alaska.

10 Wall. 367-383, 19 L. 948, RAILROAD CO v. TRIMBLE.

Syl. 4 (VII, 335). Parol inadmissible where writing clear.

Approved in Delaware Securities Co. v. Metropolitan Trust Co., 146 Fed. 607, construing trust agreement pledging stocks as security for bondholders, reserving grantor's right to vote stock, with reference to right to require proxy from grantee.

10 Wall. 383-395, 19 L. 987, BARNARD v. KELLOGG.

Syl. 2 (VII, 337). Usage to explain clear contract.

Approved in Moore v. United States, 196 U. S. 166, 49 L. 433, 25 Sup. Ct. 202, custom at San Francisco requiring consignee to designate berth for discharge of cargo does not control contract for delivery of coal "on wharf as customary" at Honolulu; Harding v. Cargo etc. of Coal, 147 Fed. 975, provision in charter-party for carrying coal that "vessel to have turn in loading" does not make custom of port to prefer steamers part of contract where it was not known to parties; Kentucky Vermillion etc. Co. v. Norwick etc. Ins. Co., 146 Fed. 699, refusing parol evidence of meaning of term "watchman's clause" in insurance policy; The Mary N. Bourke, 135 Fed. 897, where it was custom of shipyard to add arbitrary per cent to net measurement of timber used in repairing vessels, for wastage, contract for repairs to vessel presumed made with reference to custom, in absence of contrary evidence; Lillard v. Kentucky Dist. etc. Co., 134 Fed. 173, 175, 182, 67 C. C. A. 74, custom of contractors for sale of feeding slop to deliver at feeding lot supplied with cattle-pens and troughs; Clark v. Allaman, 71 Kan. 232, 80 Pac. 580, holding custom does not prevail over statute with reference to acquisition of water rights for irrigation; Pennsylvania etc. R. R. Co. v. Naive, 112 Tenn. 257, 79 S. W. 128, 64 L. R. A. 443, where it is general custom at place of consignment not to give notice of arrival of or deliver freight on Fourth of July, it is not negligence for carrier to fail to give notice or make delivery on that day: McSherry v. Blanchfield, 68 Kan. 312, 75 Pac. 122, refusing evidence of custom of elevator-men as to disputed items.

Syl. 3 (VII, 337). Custom to defeat plain intent—Caveat emptor.

Approved in Kell v. Trenchard, 142 Fed. 21, caveat emptor does not apply in case of actual fraud; Troy Grocery Co. v. Potter, 139 Ala. 368, 369, 36 So. 15, in an action for fish sold, plea setting up improper packing so that they spoiled held not to support conclusion of warranty. See 102 Am. St. Rep. 611, note.

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10 Wall. 395-409, 19 L. 937, UNITED STATES v. HODSON.

Syl. 1 (VII, 339). Recovery on bond not conformable to statute.

Approved in State v. Paxton, 65 Neb. 123, 90 N. W. 988, where official bond is filed and afterward new sureties added, new consideration required for new sureties; Jones v. Seaboard etc. Ry. Co., 67 S. C. 194, 45 S. E. 192, where railroad obstructed flow of freshet waters in navigable stream by negligent construction of bridge, owner of land bordering on stream injured by obstruction may recover therefor.

Syl. 2 (VII, 340). Disregard of illegal conditions in bond.

Approved in Probate Court of Central Falls v. Adams, 27 R. I. 99, 60 Atl. 770, bond of executor, who is also residuary legatee, properly conditioned, as required by statute, to pay debts and legacies, not invalidated because it requires executor to account.

Syl. 4 (VII, 340). Voluntary bond—Estoppel to show constraint.

Approved in Utermehle v. Norment, 197 U. S. 56, 49 L. 662, 25 Sup. Ct. 291, ignorance of rule that one taking benefits under will cannot assert its invalidity does not prevent application of rule; United States Fidelity etc. Co. v. United States, 150 Fed. 553, that Indian agent's bond contained provisions not required by statute does not affect its validity where its conditions were not in violation of law, and it was entered into voluntarily; Smith v. United States, 5 Ariz. 64, 45 Pac. 344, bond of receiver of public moneys increased by direction of president above statutory amount is not void; Territory v. Cooper, 11 Okl. 707, 69 Pac. 816, applying rule where one secured release on bail and in action on bail bond alleged inapplicability of statute permitting bail.

Syl. 6 (VII, 341). Laws to enforce collection of revenue not penal.

Approved in State v. Western Union Tel. Co., 96 Minn. 19, 104 N. W. 570, construing statutes for taxation of tangible and intangible property of telegraph companies as a system.

10 Wall. 410-415, 19 L. 972, DUCAT v. CHICAGO.

Syl. 1 (VII, 341). Corporations not citizens—Equal protection.

Approved in In re Estate of Speed, 216 Ill. 29, 108 Am. St. Rep. 189, 74 N. E. 811, holding act of May 10, 1901, exempting religious bequests from transfer taxes, does not apply to legatee, which was foreign corporation; Prewitt v. Security etc. Ins. Co., 119 Ky. 327, 83 S. W. 612, upholding Ky. St. 1903, § 631, providing for revocation of license of foreign insurance company removing suit to federal court; Humphreys v. State, 70 Ohio St. 86, 101 Am. St. Rep. 888, 70 N. E. 962, 65 L. R. A. 776, charitable societies organized under laws of other states are subject to collateral inheritance tax under Rev. St., § 2331; dissenting opinion in Security etc. Ins. Co. v. Prew-

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itt, 202 U. S. 261, 50 L. 1020, 26 Sup. Ct. 619, majority upholding Kentucky statute providing for revocation of license of foreign insurance company removing suit to federal court; Metropolitan Life Ins. Co. v. Board of Assessors, 115 La. 706, 39 So. 849, arguendo.

Syl. 3 (VII, 343). Commerce—License tax on foreign corporations.

Approved in Fisher v. Traders' Mut. Life Ins. Co., 136 N. C. 223, 48 S. E. 669, upholding Pub. Laws 1901, p. 66, relating to service of process on agent of foreign corporations; Standard Oil Co. v. Commonwealth etc., 104 Va. 685, 52 S. E. 390, construing Va. Code 1904, p. 2214, imposing license fee on foreign transportation companies.

10 Wall. 416-418, 19 L. 953, MASTERSON v. HERNDON.

Syl. 1 (VII, 344). Appeal by one defendant alone.

Approved in Port v. Schloss Bros. & Co., 149 Fed. 732, where two partners are jointly sued on firm debt, and judgment entered against both, one alone cannot maintain writ of error without severance.

10 Wall. 419, 420, 19 L. 963, THE MABEY.

Syl. 1 (VII, 345). Admiralty—Additional testimony on appeal.

Approved in The San Rafael, 141 Fed. 280, where exceptions to libel against vessel and its owner were sustained for misjoinder, libel may be amended so as to declare against vessel alone.

10 Wall. 421-423, 19 L. 973, CAMPBELL v. WILCOX.

Syl. 1 (VII, 346). Failure to stamp note—Fraudulent intent.

Approved in Baumhoff v. Oklahoma City etc. Co., 14 Okl. 138, 77 Pac. 42, complainant in action on contract need not allege instrument was stamped as required by Comp. St. 1901, p. 2300.

10 Wall. 423-427, 19 L. 954, UNITED STATES v. VIGIL.

Syl. 2 (VII, 347). Nunc pro tunc entry of appeal.

Distinguished in Gagnon v. United States, 193 U. S. 456, 48 L. 747, 24 Sup. Ct. 510, judgment of naturalization which has never been recorded cannot be entered nunc pro tunc thirty-three years after its rendition, where no entry appeared on records at time original judgment is supposed to have been rendered.

10 Wall. 427-436, 19 L. 947, TAPPAN v. BEARDSLEY.

Syl. 1 (VII, 347). Depositions in another action.

Approved in In re Alphin etc. Cotton Co., 131 Fed. 827, testimony of one not member of bankrupt corporation, taken generally under Bankr. Act, c. 541, § 21a, and not directed to any defined issue, is not admissible in subsequent proceedings against corporation's officers to compel surrender of property of estate.

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10 Wall. 454-463, 19 L. 969, THE CLINTON BRIDGE.

Syl. 1 (VII, 347). Bridge over navigable stream as post road.

Approved in United States v. Union Bridge Co., 143 Fed. 386, upholding Comp. St. 1901, p. 3345, requiring alteration of bridges on determination by Secretary of War that they do or will obstruct navigable waters; State v. Van Huse, 120 Wis. 21, 97 N. W. 505, Laws 1903, p. 234, c. 160, legalizing attempted organization of school district is not void as retroacting on pending controversy.

(VII, 347.) Miscellaneous. Cited in United States v. Cincinnati etc. R. Co., 134 Fed. 357, 67 C. C. A. 335, construing word "bridge" in 25 Stat. 74.

10 Wall. 483-497, 19 L. 992, IN RE PASCHAL.

Syl. 1 (VII, 350). Attorney's lien on client's papers.

Approved in Nodine v. Hannum, 1 Alaska, 303, following rule; State v. District Court, 30 Mont. 110, 75 Pac. 962, contempt proceedings for violation of injunction restraining trespasses on mining property cannot be resorted to for purpose of determining title to veins.

10 Wall. 497-507 19 L. 984, YATES v. MILWAUKEE.

Syl. 1 (VII, 352). Riparian owner's right of access to wharf.

Approved in United States v. Roth, 2 Alaska, 262, 263, where land abuts on waters of navigable stream, homesteader has exclusive right to use and occupation of shore between high and low water, as against trespasser; Sutter v. Heckman, 1 Alaska, 88, owner of upland has no proprietorship in tide lands immediately in front of his property; Richards v. New York etc. R. Co., 77 Conn. 505, 60 Atl. 297, 69 L. R. A. 929, determining amount of damages for impairment of right of access of riparian owner by construction of railroad; Thousand Island Steamboat Co. v. Visger, 179 N. Y. 210, 71 N. E. 764, grant of lands under navigable waters upon which riparian owner had erected docks for purpose of promoting commerce gave no exclusive right to use of dock; Matheny v. Aiken, 68 S. C. 177, 47 S. E. 61, private persons whose property outside city is damaged by sewage emptying into stream cannot abate nuisance, but are limited to statutory remedy for compensation; Taylor v. Commonwealth, 102 Va. 771, 102 Am. St. Rep. 865, 47 S. E. 880, title to bed of navigable river between low-water mark and line of navigability is in state, who may lease same.

Syl. 2 (VII, 354). Riparian rights are vested.

Approved in Sutter v. Heckman, 1 Alaska, 192, owner of uplands bordering on sea cannot be deprived of littoral rights in fronting tide flats without compensation; San Francisco Savings Union v. R. G. R. Petroleum etc. Co., 144 Cal. 137, 103 Am. St. Rep. 72, 77

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Pac. 824, 66 L. R. A. 242, erection of obstructions below high-water mark in front of land of littoral proprietor whose lands abut on ocean may be abated by proprietor whose access to ocean is prevented thereby; Crawford Co v. Hathaway, 67 Neb. 335, 108 Am. St. Rep. 654, 93 N. W. 784, riparian owner whose property rights are impaired by appropriation of water is entitled to compensation; Lathrop v. Racine, 119 Wis. 473, 97 N. W. 196, holding void Racine charter provisions for erection of docks at cost of waterfront owners as not providing for special benefits accruing to land owners.

Syl. 5 (VII, 356). Riparian rights not destroyed by statutes.

Approved in Hume v. Laurel Hill Cemetery, 142 Fed. 565, refusing to enjoin burials in cemetery which is not nuisance, though ordinance prohibits burials in county; Small v. Harrington, 10 Idaho, 521, 79 Pac. 468, refusing to enjoin construction of log boom in navigable stream; Frostburg v. Wineland, 98 Md. 244, 103 Am. St. Rep. 399, 56 Atl. 812, 64 L. R. A. 627, holding shade trees in street not per se a nuisance; Bryan v. Chester, 212 Pa. St. 262, 108 Am. St. Rep. 870, 61 Atl. 895, holding void ordinance prohibiting erection of billboards on private property; Newport News S. Co. v. Jones, 105 Va. 510, 54 S. E. 316, rights of dock company previously acquired under charter to dredge river for shipyard, covering part area assigned for oysterbed, are prior to those of assignee.

Distinguished in Helena v. Kent, 32 Mont. 289, 80 Pac. 260, upholding city ordinance making it duty of occupant of premises to keep sidewalk free from ice and snow.

Syl. 7 (VII, 358). Restraining taking property without compensation.

Approved in Wheeling etc. R. R. Co. v. Town of Triadelphia, 58 W. Va. 509, 52 S. E. 508, enjoining forfeiture of street railway franchise for alleged failure to perform conditions. See 107 Am. St. Rep. 221, note.

(VII, 352.) Miscellaneous. Cited in Matheny v. Aiken, 68 S. C. 177, 47 S. E. 61, city is corporate entity capable of being sued.

10 Wall. 519-537, 19 L. 1002, BROBST v. BROCK.

Syl. 6 (VII, 362). Mortgage sale passes mortgagee's title.

Approved in Chesapeake Beach Ry. Co. v. Washington etc. R. R. Co., 199 U. S. 251, 50 L. 178, 26 Sup. Ct. 25, deed from trustee in mortgage conveys whatever title he had, though it recites foreclosure decree; Equitable Mortgage Co. v. Gray, 68 Kan. 102, 74 Pac. 615, mortgage foreclosure purchaser is subrogated to mortgagee's rights.

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10 Wall. 537-540, 19 L. 1007, BETHELL v. DEMARET.

Syl. 1 (VII, 363). Review of state decisions—Federal question.

Approved in Chicago etc. R. R. Co. v. Newell, 198 U. S. 579, 49 L. 1171, 25 Sup. Ct. 801, following rule; French v. Taylor, 199 U. S. 277, 50 L. 192, 26 Sup. Ct. 76, state decision that formalities required by tax laws were fully observed does not present federal question. See 97 Am. St. Rep. 720, note.

10 Wall. 541-543, 19 L. 981, EX PARTE GRAHAM.

Syl. 2 (VII, 364). Review of confiscation proceedings.

See 111 Am. St. Rep. 934, note.

10 Wall. 553-556, 19 L. 998, PENNSYLVANIA v. QUICKSILVER MIN. CO.

Syl. 1 (VII, 365). Averment of citizenship of corporation.

Approved in Knight v. Lutcher etc. Lumber Co., 136 Fed. 406, 69 C. C. A. 248, for purposes of federal jurisdiction it must be alleged that corporation is created by laws of other state.

Syl. 2 (VII, 365). Supreme court—Suit by state.

Approved in Oregon v. Hitchcock, 202 U. S. 68, 50 L. 938, 26 Sup. Ct. 568, state cannot sue Secretary of Interior in supreme court to restrain allotment and patenting in severalty swamp lands in Indian reservation.

10 Wall. 557-566, 19 L. 999, THE DANIEL BALL.

Syl. 2 (VII, 365). Test of navigable waters.

Approved in Minnesota Canal etc. Co. v. Koochiching Co., 97 Minn. 443, 107 N. W. 410, following rule; United States v. Wishkah Boom Co., 136 Fed. 45, 48, 68 C. C. A. 592, river navigable for some distance by small boats is navigable, though used chiefly for floating logs; State v. Twiford, 136 N. C. 606, 48 S. E. 587, applying rule in upholding instructions in prosecution for obstructing navigable stream.

Syl. 6 (VII, 369). When interstate commerce commences.

Approved in United States v. Geddes, 131 Fed. 453, 65 C. C. A. 320, holding local railroad refusing interstate traffic except under local bill of lading, by which road assumed payment of other roads' charges, not engaged in interstate commerce.

Syl. 7 (VII, 369). Interstate commerce—Employment of independent agencies.

Approved in United States v. Geddes, 131 Fed. 454, 65 C. C. A. 320, holding local railroad refusing interstate traffic except under bill of lading, by which road assumed payment of other roads' charges, not engaged in interstate commerce.

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10 Wall. 566-577, 19 L. 1029, LIVERPOOL INS. CO. v. MASSACHUSETTS.

Syl. 2 (VII, 371). Equal protection—Corporation not citizen.

Approved in Miller v. Ahrens, 150 Fed. 656, under West Virginia laws relating to foreign religious societies, trust created by will for benefit of foreign religious corporation, involving grant of land in West Virginia, is void; Kirven v. Virginia-Carolina Chemical Co., 145 Fed. 292, failure of foreign corporation to comply with state statute imposing conditions on right to do business in state does not make contracts void.

Syl. 3 (VII, 372). Foreign corporation as corporation here.

Approved in dissenting opinion in Warren v. Pim, 66 N. J. Eq. 418, 59 Atl. 797, majority holding void, voting trust in stock of local corporation claimed by foreign corporation; Metropolitan Life Ins. Co. v. Board of Assessors, 115 La. 706, 39 So. 849, arguendo.

10 Wall. 583-589, 19 L. 1036, STOVALL v. BANKS.

Syl. 3 (VII, 374). Conclusiveness of decree against administrator.

Approved in Conway v. Carter, 11 N. M. 433, 68 Pac. 944, and Greer v. McNeal, 11 Okl. 529, 69 Pac. 894, both following rule; United Brethren v. Akin, 45 Or. 250, 77 Pac. 748, 66 L. R. A. 654, sureties on executor's bond who executed same without knowledge of his indebtedness to testator are liable under decree of distribution for such debt which was charged against him in account as money in his hands.

10 Wall. 589-593, 19 L. 1038, STAGG v. CONN. MUT. INS. CO.

Syl. 3 (VII, 375). Insurance agents—Right to renewal premiums.

Approved in Chase v. N. Y. Life Ins. Co., 188 Mass. 273, 74 N. E. 326, where insurance agency contract providing for payment of commissions or renewals for five years, if agency continued so long, agent fired before five years not entitled to such commissions.

10 Wall. 604-676, 19 L. 1008, MERCHANTS' BANK v. STATE BANK.

Syl. 1 (VII, 376). When directed verdict proper.

Approved in Parks v. Southern Ry. Co., 143 Fed. 278, and Huntt v. McNamee, 141 Fed. 294, both upholding refusal of voluntary nonsuit after plaintiff had concluded his evidence and defendant's motion for direction of verdict had been sustained.

Syl. 4 (VII, 377). Estoppel of corporation to deny contract.

Approved in Sturdevant Bros. & Co. v. Farmers' etc. Bank, 69 Neb. 240, 95 N. W. 826, holding cashier cannot obligate bank by signing replevin bond in action between third parties.

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Syl. 5 (VII, 379). Liability of corporation for acts of agents.

Approved in Hier v. Miller, 68 Kan. 268, 75 Pac. 80, 63 L. R. A. 952, where bank cashier attempts to pay individual debts by entering same upon passbook of creditor, who is depositor, so that they are checked out, bank may recover amount from creditor.

Syl. 6 (VII, 380). Corporation's liability for agents' torts.

Approved in Stewart v. Wright, 147 Fed. 328, applying rule where bank officials participated in conspiracy to swindle by means of fake footrace.

Syl. 7 (VII, 380). Liability created by certified check.

Approved in Union Trust Co. v. Preston Nat. Bank, 136 Mich. 462, 99 N. W. 399, holding certified check valid in hands of bona fide holder, though drawer had no funds in bank when certified; Johnston etc. Co. v. National Bank of Guthrie, 4 Okl. 26, 44 Pac. 195, applying rule where president of national bank entered into conspiracy to defraud third persons, and carried out fraudulent design, through his relations with bank; State v. Miller, 47 Or. 566, 85 Pac. 82, applying rule in prosecution of bank cashier for drawing and certifying personal check when he had no deposits.

Syl. 8 (VII, 381). When bank check due.

Approved in Elliott v. Capital City State Bank, 128 Iowa, 278, 103 N. W. 778, certificate of deposit is not due and payable until actual demand is made.

Syl. 9 (VII, 381). Bank check not bill of exchange.

Approved in United States v. Green, 136 Fed. 645, 646, 650, bank check is not "obligation for payment of money" within Rev. St., § 5451, punishing bribery.

Syl. 11 (VII, 382). Evidence of usage to explain ambiguities.

Approved in Harding v. Cargo etc. of Coal, 147 Fed. 976, provision of charter to carry coal that vessel to have turn in loading does not make part of contract port custom of giving preference to steamers filling bunkers.

10 Wall. 676-684, 19 L. 1040, MARSH v. FULTON COUNTY.

Syl. 3 (VII, 383). Purchaser of bonds must examine officers' acts.

Approved in Green Co. v. Shortell, 116 Ky. 126, 75 S. W. 254, holding county could plead noncompliance with statute in defense to action by bona fide holder of aid bonds containing no recital as to authority of officers to issue same.

Syl. 5 (VII, 386). Compelling municipality to restore loan.

Approved in Luther v. Wheeler, 73 S. C. 95, 52 S. E. 878, upholding right to recover of town money received on note for erecting public building, though note was invalid.

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Syl. 6 (VII, 387). Ratification of illegal county bonds.

Approved in Wormstead v. Lynn, 184 Mass. 428, 68 N. E. 843, where one entered into contract with official undertaking to act for city, city not estopped to deny official's authority by proof that same officer had made similar contracts which had been ratified.

Syl. 7 (VII, 387). Agency—Ratification is equivalent to prior authority.

Approved in Marion Water Co. v. City of Marion, 121 Iowa, 322, 96 N. W. 888, holding city liable on hydrant rental contract.

XI WALLACE.

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11 Wall. 1-36, 20 L. 90, NEW ENGLAND ETC. INS. CO. v. DUNHAM.

Syl. 4 (VII, 388). Scope of admiralty jurisdiction.

Approved in Erie etc. Transp. Co. v. Erie R. Co., 142 Fed. 12, upholding admiralty jurisdiction over suit to enforce contribution in favor of one of two colliding vessels against other for damages to cargo owner, paid by libelant.

Syl. 6 (VII, 389). Admiralty—What are maritime contracts.

Approved in North German F. Ins. Co. v. Adams, 142 Fed. 440, following rule; Bowers Hyd. D. Co. v. Federal Cont. Co., 148 Fed. 293, upholding admiralty jurisdiction over suit for hire of dredge generally used for maritime purposes, though temporarily used for land transaction in dredging stream; The Conveyor, 147 Fed. 590, where proceeds of insurance money paid to custodian to pay for raising boat, repairs and supply liens, and pay remainder to mortgagee, and boat raised but not repaired, and sold by his claimants, contract was maritime; United States Shipping Co. v. United States, 146 Fed. 919, upholding admiralty jurisdiction over suit against United States under Comp. St. 1901, p. 752, based on maritime contract of affreightment.

Syl. 7 (VII, 391). Marine insurance is maritime contract.

Distinguished in Graham v. Oregon etc. Nav. Co., 134 Fed. 464, denying admiralty jurisdiction of suit for breach of traffic agreement between railroad and steamship company.

11 Wall. 39-65, 20 L. 67, VIRGINIA v. WEST VIRGINIA.

Syl. 1 (VII, 392). Supreme court's original jurisdiction in boundaries.

Cited in State v. Faudre, 54 W. Va. 125, 135, 102 Am. St. Rep. 927, 46 S. E. 270, 274, 63 L. R. A. 877, arguendo.

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11 Wall. 88-95, 20 L. 153, UNITED STATES v. TYNEN.

Syl. 2 (VII, 398). Statutes—Repeals by implication.

Approved in United States v. Cardish, 145 Fed. 245, construing 23 Stat. 385, and Rev. St., § 2143, relating to arson on reservation within state; Utter v. Franklin, 7 Ariz. 309, 64 Pac. 430, Laws 1899, Act No. 32, repealing territorial acts creating funding debt commission, is void; Pratt Institute v. City of New York, 183 N. Y. 157, 75 N. E. 1121, Laws 1896, p. 797, c. 908, § 4, subd. 7, exempting realty of educational institutions used exclusively for corporate purposes repeals special act granting tax exemption to educational corporations; dissenting opinion in Lang v. United States, 133 Fed. 207, 66 C. C. A. 255, majority holding § 28 of Immigration Act of 1903 applies to prosecutions thereafter begun under old law, based on acts committed prior to its repeal.

Syl. 3 (VII, 400). Repeal of statute ends jurisdiction.

Approved in United States v. Sena, 12 N. M. 414, 78 Pac. 62, repeal of Laws of 1901, p. 190, c. 99, deprived supreme court of jurisdiction over criminal appeals not taken during term.

11 Wall. 96-108, 20 L. 155, CITY OF NEW ALBANY v. BURKE.

Syl. 7 (VII, 403). Limitations—Means of detecting fraud.

Approved in German Sav. Bank v. Des Moines Nat. Bank, 122 Iowa, 745, 98 N. W. 609, where bank cashier gave notes in individual capacity and as treasurer of a company to third party with bank's guaranty, and bank paid them before maturity, four years' delay by bank in suing to recover money so paid because it was represented to it that notes had been discounted in usual course was laches.

11 Wall. 108-112, 20 L. 65, DOWS v. CITY OF CHICAGO.

Syl. 1 (VII, 403). Illegality of tax not ground for enjoining collection.

Approved in Illinois Life Ins. Co. v. Newman, 141 Fed. 451, 452, refusing to enjoin collection of illegal state tax; dissenting opinion in San Francisco Nat. Bank v. Dodge, 197 U. S. 110, 111, 49 L. 686, 687, 25 Sup. Ct. 384, majority holding taxation of national bank shares at market value under Cal. Pol. Code, §§ 3608-3610, is discriminatory in view of exclusion of intangible elements of value in assessing state banks.

Syl. 5 (VII, 407). Effect of dismissal on cross-bill.

Approved in Gilmore v. Bort, 134 Fed. 662, in suit for cancellation of bond given to indemnify corporation and its treasurer, cross-bill by treasurer setting up validity of bond and praying for release on his own bond if it is valid does not entitle treasurer to object to dismissal of suit.

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11 Wall. 113-129, 20 L. 222, THE COLLECTOR v. DAY.

Syl. 1 (VII, 407). State taxes on government instrumentalities.

Approved in Mosely v. State, 115 Tenn. 59, 86 S. W. 716, interest on government bonds not taxable by states as income; dissenting opinion in South Carolina v. United States, 199 U. S. 468, 50 L. 272, 26 Sup. Ct. 110, majority holding government may exact revenue license from dispensing agent of state which has taken charge of liquor business.

Limited in South Carolina v. United States, 199 U. S. 459, 50 L. 269, 26 Sup. Ct. 110, government may exact revenue license from dispensing agent of state which has taken charge of liquor business.

Distinguished in Sackett v. McCaffrey, 131 Fed. 222, 65 C. C. A. 205, notary's certificate of acknowledgment of homestead declaration is subject to stamp tax under War Revenue Act, § 13.

Syl. 2 (VII, 408). Federal tax on state officer's salary.

Approved in dissenting opinion in South Carolina v. United States, 199 U. S. 466, 50 L. 272, 26 Sup. Ct. 110, majority holding government may exact revenue license from dispensing agent of state which has taken charge of liquor business.

Limited in South Carolina v. United States, 199 U. S. 453, 50 L. 266, 26 Sup. Ct. 110, government may exact revenue license from dispensing agents of state which has taken over liquor business.

11 Wall. 129-135, 20 L. 160, WESTERN TRANSPORTATION CO. v. DOWNER.

Syl. 3 (VII, 410). Carriers—Avoidable danger presumes negligence.

Approved in Cau v. Texas etc. Ry. Co., 194 U. S. 432, 48 L. 1057, 24 Sup. Ct. 663, burden of showing fire causing loss was due to negligence of carrier is on shipper where bill of lading exempts from loss by fire; The Folmina, 143 Fed. 639, under bill of lading exempting from loss by sea water or sweating, evidence that vessel was seaworthy and cargo properly stowed, and that damage caused by seawater, shows good defense.

Syl. 4 (VII, 411). Presumption of negligence from accident.

Approved in Burr v. Knickerbocker etc. Towage Co., 132 Fed. 249, 65 C. C. A. 554, holding presumption of negligent towing shown where tow grounded on calm day; Rebstock v. Gilchrist Transp. Co., 132 Fed. 180, holding collision of steamer in tow of two tugs with moored vessel due to fault of rear tug in failing to properly assist steamer; The W. G. Mason, 131 Fed. 637, where steamer in tow of two tugs stranded, though she obeyed signals of leading tug, presumption is that stranding due to fault of tugs; Nashville etc. Ry. Co. v. Stone, 112 Tenn. 371, 79 S. W. 1036, applying rule where part of shipment of hogs dead when delivered. See 113 Am. St. Rep. 990, 992, note.

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11 Wall. 136-139, 20 L. 101, AMY v. SUPERVISORS.

Syl. 2 (VII, 413). Federal court cannot enjoin state.

Approved in Ingraham v. National Salt Co., 139 Fed. 690, where, pending attachment proceedings in federal court, state insolvency proceedings begun and receiver took attached property and sold it, and then plaintiff recovered in federal court and marshal advertised execution sale of attached property, state injunction suit against sale not enjoined.

Syl. 6 (VII, 414). Honest intentions no excuse for officer.

Approved in State v. McClellan, 113 Tenn. 622, 85 S. W. 269, register of deeds is liable on bond for failure to correctly register conveyance.

11 Wall. 139-164, 20 L. 102, SMITH v. SAC COUNTY.

Syl. 2 (VII, 414). Notes—Fraud as shifting burden of proof.

Approved in Toledo etc. R. R. Co. v. Star etc. Mills Co., 146 Fed. 959, determining degree of proof required of railroad in action under Ohio statute making fact of fire caused by locomotive sparks prima facie negligence; Gamble v. Rural Ind. School Dist., 132 Fed. 521, one receiving school bond from prior holder for legal services rendered to full value of bond is bona fide holder where bond not due and contained nothing on face to show illegality; Gibbs v. Farmers' etc. Bank, 123 Iowa, 742, 99 N. W. 706, in action to recover overpayments on note where indorsements show such overpayments, burden is on plaintiff throughout case; Klunk v. Hocking Valley Ry. Co., 74 Ohio St. 134, 77 N. E. 754, applying rule in action by fireman for personal injuries received in consequence of defect in water gauge attached to his locomotive.

11 Wall. 164-171, 20 L. 127, THE SAPPHIRE.

Syl. 8 (VII, 417). Collision between anchored vessels.

Approved in The City of Birmingham, 138 Fed. 559, holding dredge anchored at night near center of narrow channel liable for collision with passing steamer.

11 Wall. 172-178, 2 L. 179, SUSQUEHANNA ETC. COAL CO. v. BLATCHFORD.

Syl. 1 (VII, 418). Jurisdiction—Diversity of citizenship.

Approved in Sweeney v. Carter Oil Co., 199 U. S. 257, 50 L. 180, 26 Sup. Ct. 55, two citizens of different states may sue in federal court citizen of another state; Anderson v. Bassman, 140 Fed. 11, denying federal jurisdiction over suit to enjoin diversion of water by means of irrigation ditches, where one of defendants is citizen of same state as plaintiff.

Syl. 2 (VII, 419). Diversity of citizenship of trustees.

Approved in In re E. T. Kenney Co., 136 Fed. 455, beneficial interest of assignors in net proceeds of claims assigned to committee to set-

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tle affairs, after administering trust, are not provable in bankruptcy. Virginia etc. Power Co. v. Fisher, 104 Va. 135, 136, 51 S. E. 203, bondholder cannot bring suit to foreclose mortgage securing railroad bonds, unless trustee refuses to do so.

11 Wall. 193-199, 20 L. 110, GENERES v. CAMPBELL.

Syl. 2 (VII, 425). Seal not necessary to bill of exceptions.

Distinguished in Kipp v. Burton, 29 Mont. 102, 101 Am. St. Rep. 544, 74 Pac. 87, 63 L. R. A. 325, execution issued without seal may be amended nunc pro tunc.

11 Wall. 199-203, 2 L. 134, CASE v. TERRELL.

Syl. 2 (VII, 425). National bank receiver represents bank.

Approved in Murphy v. Gumaer, 18 Colo. App. 190, 70 Pac. 802, where national bank had made loan to corporation in excess of legal amount, and its principal stockholder induced defendant to execute note payable to bank and others indorsed to it, unauthorized loans being released accordingly, release of claim on loans was on good consideration.

11 Wall. 217-238, 20 L. 50, MAY v. LE CLAIRE.

Syl. 2 (VII, 429). Quitclaim deed—Bona fide purchaser.

Approved in Lindblom v. Rocks, 146 Fed. 663, applying rule in ejectment; Mosier v. Momsen, 13 Okl. 50, 74 Pac. 908, arguendo.

Distinguished in Martin v. Ragsdale, 71 S. C. 77, 50 S. E. 674, fact that land conveyed by several quitclaim deeds, where last two grantors held under warranty deeds, does not affect bona fide purchaser, where inquiry under record facts would not have discovered facts relied on to defeat his title.

Syl. 7 (VII, 432). Remedy of cestui on abuse of trust.

Approved in Southern Pac. R. Co. v. United States, 133 Fed. 657, 66 C. C. A. 581, upholding equity jurisdiction over suit by government to ascertain what portion of lands erroneously patented to railroad have been sold to bona fide purchasers and for cancellation of lands not so disposed of, and for accounting.

Syl. 8 (VII, 432). Specific performance—Adequacy of law remedy.

Approved in Mutual Life Ins. Co. v. Blair, 130 Fed. 976, granting specific performance where life policy provided that on assured's death settlement should be had by issuance of annuity policy.

11 Wall. 238-243, 20 L. 114, THE FANNIE.

Syl. 1 (VII, 433). Collision—Steamer should avoid schooner.

Approved in Brigham v. Luckenbach, 140 Fed. 333, holding tug liable for collision with steamer caused by jamming of wheel where it would not have happened if proper lookout kept; The W. G. Mason, 131

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Fed. 635, determining liability for stranding of tow in charge of two tugs.

Syl. 2 (VII, 433). Want of lookout immaterial, when.

Approved in The Pocomoke, 150 Fed. 197, holding launch not liable for daytime collision for failure to have lookout other than navigator; The Fannie Hayden, 137 Fed. 283, 284, schooner at fault where only two men on deck were furling sail, though privileged vessel had no proper lookout.

11 Wall. 244-256, 20 L. 86, LEVY v. STEWART.

Syl. 1 (VII, 434). Limitation statutes are of repose.

Approved in Lynchburg etc. Mill Co. v. Travelers' Ins. Co., 140 Fed. 724, conduct of insurance company inducing delay in bringing suit beyond time limit in policy for stated purpose of investigating claim suspends operation of time limit.

11 Wall. 259-268, 20 L. 80, McVEIGH v. UNITED STATES.

Syl. 2 (VII, 435). Alien enemy entitled to all judicial remedies.

Approved in Keele v. Keele, 118 Mo. App. 275, 94 S. W. 780, heir whose application to be heard in opposition to allowance of claim against decedent's estate may, under Rev. St. 1899, § 214, move to vacate order allowing claim; Youst v. Willis, 5 Okl. 416, 49 Pac. 1014, upholding act of 1895, providing for entry of judgment on appeal bond on motion and notice, when applied to appeal bond executed prior to passage of act; dissenting opinion in Daniels v. Homer, 139 N. C. 268, 51 S. E. 1010, 3 L. R. A. (N. S.) 997, majority upholding Acts 1905, c. 292, regulating fisheries and providing for seizure of illegal fish nets.

Distinguished in Bennett v. Bennett, 16 Okl. 184, 83 Pac. 556, upholding default divorce decree where alimony pendente lite not paid and defaulting defendant without answering asks leave to defend on merits, which leave is denied unless alimony paid.

Syl. 3 (VII, 437). Alien may sue and be sued.

Distinguished in Bennett v. Bennett, 16 Okl. 180, 83 Pac. 555, upholding default divorce decree where defendant not answering was denied leave to defend on merits unless alimony order complied with.

11 Wall. 268-331, 20 L. 135, MILLER v. UNITED STATES.

Syl. 10 (VII, 439). Effect of default in admiralty.

Approved in Dowdell v. United States District Court, 139 Fed. 446, where proceedings for limitation of liability have been terminated by final decree, court cannot reopen proceedings to allow nonappearing claimants to prove claims.

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11 Wall. 356-369, 20 L. 167, THE DISTILLED SPIRITS.

Syl. 4 (VII, 442). Statutes in pari materia construed together.

Approved in Christie Street etc. Co. v. United States, 136 Fed. 333, 69 C. C. A. 464, action against government on claim to recover internal taxes illegally exacted, which has been presented but not approved by commissioner, is barred in two years.

Syl. 6 (VII, 443). Agent's knowledge is principal's.

Approved in Aetna Indemnity Co. v. Ladd, 135 Fed. 647, 68 C. C. A. 274, upholding instructions relative to presumption of authority of general agent of surety company; Modern Woodmen of America v. Colman, 68 Neb. 664, 94 N. W. 816, applying rule to knowledge of agent of mutual benevolent association.

Syl. 7 (VII, 445). Presumption that agent has told principal.

Approved in Dight v. Chapman, 44 Or. 278, 75 Pac. 589, 65 L. R. A. 793, knowledge of bankruptcy proceedings acquired by cashier of bank, which is bankrupt's creditor, is imputed to creditors of insolvent corporation, of which bankrupt is stockholder and of which cashier is receiver.

Syl. 8 (VII, 445). Notice to agent is notice to principal.

Approved in American Bonding Co. v. Spokane etc. Loan Society, 130 Fed. 741, 65 C. C. A. 121, knowledge of president of loan society that secretary was, at time of indemnity policy, indebted to company is not breach of warranty in policy that secretary was not so indebted; In re Pease, 129 Fed. 455, where trust company, through its attorney, who also acted for certain creditors of merchant, who was actually insolvent, loaned merchant money on borrower's stock, with which certain creditors paid in full, mortgage was void as preference under Bankr. Act, § 67e; Schollay v. Moffit-West Drug Co., 17 Colo. App. 134, 67 Pac. 184, applying rule where agent of seller at time of sale to another agent was advised of latter agent's lack of authority to purchase.

11 Wall. 369-378, 20 L. 172, FIRST NAT. BANK v. LANIER.

Syl. 6 (VII, 448). National bank shareholder selling during insolvency.

Approved in McDonald v. Dewey, 202 U. S. 520, 535, 50 L. 1132, 1139, 26 Sup. Ct. 731, stockholder in national bank, who, with knowledge of its insolvency, transfers shares to financially irresponsible vendee, cannot escape stockholder's liability; Third Nat. Bank v. Buffalo German Ins. Co., 193 U. S. 591, 48 L. 804, 24 Sup. Ct. 524, national bank cannot forbid transfer of its shares, without consent of directors, by stockholder while he is indebted to bank.

Distinguished in Bridge v. National Bank of Troy, 185 N. Y. 150, 77 N. E. 1006, national bank acquires no equitable lien as against

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indebted stockholder on his distributive share of assets on liquidation of bank's affairs.

Syl. 7 (VII, 448). Stock certificates approximate negotiable instruments.

Approved in Easton Nat. Bank v. American Brick etc. Co., 69 N. J. Eq. 335, 60 Atl. 58, bona fide transferees of stock certificates reciting that they are fully paid up are not liable to creditors where they were ignorant that original subscribers had not paid in full.

Syl. 10 (VII, 451). National banks—Stock transfers without surrender.

Approved in First Nat. Bank v. Stribling, 16 Okl. 56, 57, 86 Pac. 517, corporate shares cannot be reissued without surrender of original certificate; dissenting opinion in Monahan v. Monahan, 77 Vt. 151, 59 Atl. 174, 70 L. R. A. 935, majority holding complainant seeking to impress with trust securities which had been secretly obtained from him, not denied relief because securities put in defendant's name to evade taxation.

11 Wall. 391-395, 20 L. 190, SECOND NAT. BANK v. HUNT.

Syl. 1 (VII, 453). Instructions cannot assume what not proven.

Approved in Semet-Solway Co. v. Wilcox, 143 Fed. 840, applying rule in action for breach of contract of employment.

Syl. 2 (VII, 453). Oral agreement by debtors to sell personalty.

Approved in Feely v. Bryan, 55 W. Va. 588, 47 S. E. 308, where one loaned money to another on agreement that certain property was to be mortgaged to secure loan, and later borrower makes mortgage, it is not good, preference as other debts existing at date of mortgage.

Syl. 4 (VII, 453). Chattel mortgage permitting sale of goods.

Distinguished in In re Burnham, 140 Fed. 929, provision of mortgage permitting sale of mortgaged goods in usual course of business does not render it void as to after-acquired goods.

11 Wall. 395-411, 20 L. 116, MISSOURI v. KENTUCKY.

Syl. 2 (VII, 454). Boundary of Kentucky middle of Mississippi.

Approved in Louisiana v. Mississippi, 202 U. S. 54, 50 L. 932, 26 Sup. Ct. 408, long acquiescence in assertion of particular boundary between states and exercise of sovereignty over territory within it is conclusive.

Syl. 3 (VII, 455). State boundary once fixed—Changes in river.

Approved in Missouri v. Nebraska, 196 U. S. 35, 49 L. 375, 25 Sup. Ct. 155, applying rule in determining boundary between Missouri and Nebraska; Moore v. McGuire, 142 Fed. 791, 792, 799, determining boundary between Arkansas and Mississippi, with reference to sover-

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eignty over island in river; Foppiano v. Speed, 113 Tenn. 173, 82 S. W. 223, one engaged in selling liquor on steamer making regular trips to port in another state is subject to tax imposed by Acts 1901, p. 214, while boat was in this state.

Syl. 4 (VII, 455). Maps and books as evidence.

Approved in Moore v. McGuire, 142 Fed. 793, determining boundary between Arkansas and Mississippi, with reference to sovereignty over island in river.

11 Wall. 411-416, 20 L. 191, THE MONTELLO.

Syl. 2 (VII, 455). What is navigable water of United States.

Approved in United States v. Union Bridge Co., 143 Fed. 378, Allegheny river is navigable waterway of the United States; State v. Twiford, 136 N. C. 606, 48 S. E. 587, upholding instructions defining navigable stream, in prosecution for obstructing same; Birch v. King, 71 N. J. L. 394, 59 Atl. 11, plea to jurisdiction averring that cause of action arose upon navigabile waters, is insufficient; Manigault v. Springs, 199 U. S. 478, 50 L. 277, 26 Sup. Ct. 127, arguendo.

11 Wall. 423-432, 20 L. 192, ST. LOUIS v. WIGGINS FERRY CO.

Syl. 1 (VII, 457). Bill of exceptions unnecessary where special findings.

Approved in Webb v. National Bank of Republic, 146 Fed. 719, following rule.

Syl. 3 (VII, 457). Exercise of corporate franchise extraterritorially.

Cited in Kansas City etc. Ry. Co. v. Stevenson, 135 Fed. 554, arguendo.

Syl. 4 (VII, 458). Legislature decides mode and extent of taxation.

Approved in Union etc. Transit Co. v. Kentucky, 199 U. S. 205, 50 L. 154, 26 Sup. Ct. 36, holding void Kentucky tax on Kentucky railroad's rolling stock permanently located in other state; Flowerree etc. Co. v. Lewis & Clark Co., 33 Mont. 38, 81 Pac. 400, where corporation owning cattle which grazed in county where its business manager resided drove them elsewhere for feeding with intention to return them, cattle not taxable in latter county; Harrell v. Speed, 113 Tenn. 228, 106 Am. St. Rep. 814, 81 S. W. 841, one running bar on vessel belonging to Arkansas corporation and plying between Arkansas and Tennessee is liable to Tennessee license tax while running bar in Tennessee.

Distinguished in Prairie Cattle Co. v. Williamson, 5 Okl. 494, 49 Pac. 939, where cattle owned in another state grazed in this state during entire year, they are taxable here though already listed in other state.

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Syl. 7 (VII, 458). What is home port of vessel.

Approved in Ayer etc. Tie Co. v. Kentucky, 202 U. S. 421, 50 L. 1087, 26 Sup. Ct. 678, rule not changed by Comp. St. 1901, p. 2831, § 21.

11 Wall. 438-442, 20 L. 197, INSURANCE CO. v. WEIDE.

Syl. 2 (VII, 460). What evidence should go to jury.

Approved in Texas & P. Ry. Co. v. Coutourie, 135 Fed. 469, 68 C. C. A. 177, where destruction of cotton by fire while piled on dock was alleged to have been caused by negligent method of piling, evidence of habitual intoxication of superintendent is admissible.

Syl. 4 (VII, 461). Presumption defined.

Approved in Wabash R. Co. v. De Var, 141 Fed. 934, applying rule to instructions as to presumption of negligence in action for death caused by collision.

11 Wall. 459-483, 20 L. 199, GALVESTON R. R. v. COWDREY.

Syl. 10 (VII, 465). Corporation mortgage of after-acquired property—Estoppel.

Approved in Pere Marquette R. R. Co. v. Graham, 136 Mich. 449, 99 N. W. 410, construing railroad mortgage covering present and after-acquired property, as covering after-acquired lot adjacent to main line.

Syl. 14 (VII, 467). Mortgage covers rails put on subsequently.

Approved in Missouri Pac. Ry. Co. v. Bradbury, 106 Mo. App. 458, 79 S. W. 968, where railroad granted right of way afterward abandons road without removing rails, they become property of owner of land.

11 Wall. 484-488, 20 L. 207, FORSYTH v. WOODS.

Syl. 1 (VII, 471). Partner's joint contract not firm liability.

Approved in In re Weisenberg, 131 Fed. 518, joint debts of partners comprising bankrupt firm are not provable against firm estate to share equally with firm creditors.

Syl. 2 (VII, 471). Priority of firm debts on firm's bankruptcy.

Approved in In re Weisenberg, 131 Fed. 519, 520, joint debts of partners composing bankrupt firm are not provable against firm estate to share equally with firm creditors.

11 Wall. 493-507, 20 L. 176, STEWART v. KAHN.

Syl. 2 (VII, 473). Omitted parts in Revised Statutes.

Approved in Succession of Dupre, 116 La. 1094, 41 So. 325, applying rule in construing statutes relating to adoption; Dryden v. Pitts-

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burg etc. Ry. Co., 208 Pa. St. 323, 57 Atl. 713, construing statutes and holding railroad in widening lines may condemn dwelling.

Syl. 6 (VII, 474). Effect of Rebellion on statute of limitations.

See 111 Am. St. Rep. 455, note.

11 Wall. 508-515, 20 L. 211, UNITED STATES v. WILEY.

Syl. 2 (VII, 476). Statutes of limitation are of repose.

Approved in Lynchburg etc. Mill Co. v. Travelers' Ins. Co., 140 Fed. 724, conduct of insurance company inducing delay in bringing suit beyond time limit in policy, for stated purpose of investigating claim, suspends operation of time limit.

Syl. 3 (VII, 476). Suspension of statute of limitations.

Approved in Alice E. Min. Co. v. Blanden, 136 Fed. 255, applying principle to suit on note where maker died after maturity; Cobb v. Houston, 117 Mo. App. 653, 94 S. W. 301, statute of limitations is suspended during defendant's nonresidence.

11 Wall. 516-560, 20 L. 33, SEYMOUR v. OSBORNE.

Syl. 15 (VII, 482). Amendment of reissue patent.

Approved in United States Whip Co. v. Hassler, 134 Fed. 402, Turner reissue No. 12,058, for tension for racers of braiding machine, void as not being for same device as original.

Syl. 19 (VII, 484). Patents—Construction with reference to specifications.

Approved in Comptograph Co. v. Universal etc. Mach. Co., 142 Fed. 543, upholding Felt patent No. 628,176, for improvement in computing machine; O. H. Jewell Filter Co. v. Jackson, 140 Fed. 345, construing Jewell patent No. 509,126, for improvements in filtering apparatus; Scott v. Fisher etc. Mach. Co., 139 Fed. 145, Bellis patent No. 561,559, for improvements in knitting machines not infringed.

Syl. 20 (VII, 484). Patents—New and useful improvements.

Approved in United States Fastener Co. v. Meyers, 145 Fed. 537, Pringle patent No. 580,001, for separable button, limited and not infringed by device of Kerngood patent No. 645,624.

Syl. 24 (VII, 485). Patent—Effect of foreign patent.

Approved in Columbus Chain Co. v. Standard Chain Co., 148 Fed. 627, Carroll patent No. 620,826, for swaging device for regulating dimensions of chain links, anticipated by Swiss patent to Goerke No. 9592; Keasbey etc. Co. v. Philip Carey Mfg. Co., 139 Fed. 576, Hanmore patent No. 545,843, for nonconducting cover for steam pipes not anticipated; Crown Cork etc. Co. v. Standard Stopper Co., 136 Fed. 204, 69 C. C. A. 519, Painter patents No. 468,258 and No. 582,762, for bottle-stoppers, infringed by device of Patterson patent No. 682,995;

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Valvona v. D'Adamo, 135 Fed. 545, Valvona patent No. 701,776, for mold for biscuit cups used for holding ice-cream, not anticipated; Pettibone v. Pennsylvania Steel Co., 133 Fed. 737, Strom patent No. 498,196, for railroad switch-stand, not anticipated.

Distinguished in Welsbach etc. Co. v. Cremo etc. Co., 145 Fed. 525, Heald patent No. 423,317, for gas-lamp appliance construed.

Syl. 26 (VII, 487). Patents—Doctrine of equivalents.

Approved in Cortis v. American etc. Supply Co., 145 Fed. 519, Cortis patent No. 613,648, for lamp and mantle supporting device, not infringed by device of Momand patent No. 781,613.

11 Wall. 560-566, 20 L. 214, HOLLIDAY v. HAMILTON.

Syl. 1 (VII, 488). Bill of lading in consignee's name—Title.

Approved in Easton v. Geo. Wostenholm & Son, 137 Fed. 532, 70 C. C. A. 108, where firm employed complainant to buy goods in England, he to advance money, title to goods passed on delivery to carrier, irrespective of time of delivery of bill of lading.

11 Wall. 581-590, 20 L. 216, LUDLOW v. RAMSEY.

Syl. 1 (VII, 491). Judicial sale not collaterally attackable for errors.

Approved in Heid v. Ebner, 133 Fed. 158, 66 C. C. A. 222, answer setting up title through execution sale, containing averments of judgment, execution and sale thereunder and confirmation, is good without setting out proceedings relative to execution and sale.

11 Wall. 591-609, 20 L. 220, REED v. UNITED STATES.

Syl. 1 (VII, 493). Affreightment and letting of ship distinguished.

Approved in Grimberg v. Columbia Packers' Assn., 47 Or. 262, 263, 83 Or. 196, construing charter of vessel as one of affreightment merely.

Syl. 3 (VII, 493). Demise of vessel—Hirer responsible for crew.

Approved in Hills v. Leeds, 149 Fed. 880, construing charter for yacht for portion of year, hirer to control and pay captain as a letting of ship; Auten v. Bennett, 183 N. Y. 501, 76 N. E. 610, where, under charter, owner agreed to deliver vessel at certain port, and charterer was to have control of vessel, there was lease of vessel though owner paid wages.

11 Wall. 610-616, 20 L. 223, DUNPHY v. KLEINSMITH.

Syl. 5 (VII, 496). Decree in suit for recovery of fraudulent conveyance.

Cited in Harrigan v. Gilchrist, 121 Wis. 252, 99 N. W. 942, arguendo.

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Syl. 6 (VII, 496). Verdict by three-fourths of jury.

Approved in Bradford v. Territory, 1 Okl. 374, 34 Pac. 68, holding void St. Okl., c. 70, art. 18, § 22, providing that nine jurors may return verdict.

11 Wall. 616-624, 20 L. 227, THE CHEROKEE TOBACCO.

Syl. 8 (VII, 498). Treaty supersedes prior statute.

Approved in Hijo v. United States, 194 U. S. 324, 48 L. 996, 24 Sup. Ct. 727, United States not suable under Tucker Act of 1887, on claim for value of use by army of Spanish merchant vessel captured during war.

11 Wall. 624-632, 20 L. 82, FOURTH NAT. BANK v. N. O. & CARROLLTON R. R. CO.

Syl. 2 (VII, 499). Partner entitled only to share in net profits.

Approved in Moore v. Rawson, 185 Mass. 272, 70 N. E. 66, following rule.

Syl. 6 (VII, 500). Indispensable party necessary to equity suit.

Approved in United States v. Northern Pac. R. Co., 134 Fed. 719, 67 C. C. A. 269, suit by government to annul contract between corporations, not within circuit court's jurisdiction, where it has not jurisdiction over one of corporations.

11 Wall. 652-659, 20 L. 235, HENDERSON'S TOBACCO.

Syl. 1 (VII, 502). Statutes—Repeal by implication.

Approved in United States v. Cardish, 145 Fed. 244, under 23 Stat. 385, arson may be committed on reservation, irrespective of race of defendant or of possessor of building; Christie Street Com. Co. v. United States, 136 Fed. 333, 69 C. C. A. 464, action against United States on claim to recover back internal taxes illegally collected is barred in two years; United States v. Foreman, 5 Okl. 257, 48 Pac. 98, one suing in territorial district court for recovery of money paid for land on which entry erroneously allowed and afterward canceled, need not show surrender of duplicate receipt or execution of relinquishment of claims to land.

11 Wall. 659-672, 20 L. 29, COOK v. BURNLEY.

Syl. 2 (VII, 504). Plea in abatement too late after answer.

Approved in Wetzel etc. Ry. Co. v. Tennis Bros. Co., 145 Fed. 464, following rule.

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XII WALLACE.

12 Wall. 1-18, 20 L. 272, THE COLLECTOR v. HUBBARD.

Syl. 9 (VII, 507). Recovery of taxes illegally collected.

Approved in Kahn v. Herold, 147 Fed. 580, where, at time executors paid internal revenue inheritance tax on life estate under protest, they did not know life tenant had died, payment was not voluntary.

12 Wall. 47-65, 20 L. 265, PHILADELPHIA ETC. RAILROAD CO. v. DUBOIS.

Syl. 4 (VII, 511). Infringement—Fraud in procuring patent no defense.

Approved in Eastern etc. Bag Co. v. Continental etc. Bag Co., 142 Fed. 511, upholding Liddell patent No. 588,969, for paper-bag machine.

12 Wall. 65-86, 20 L. 354, BALTIMORE & O. R. R. CO. v. HARRIS.

Syl. 1 (VII, 511). Chartering foreign corporation is mere license.

Approved in Baltimore etc. R. R. Co. v. Allen, 58 W. Va. 398, 112 Am. St. Rep. 985, 52 S. E. 469, 3 L. R. A. (N. S.) 608, applying principle in garnishment proceedings; Kansas City etc. Ry. Co. v. Stevenson, 135 Fed. 554, arguendo.

Syl. 3 (VII, 513). Consent of foreign corporation to suit.

Approved in Kibbler v. St. Louis etc. R. Co., 147 Fed. 881, foreign corporation which, under state laws, can be sued in state courts only in counties where it does business, cannot be sued in federal court unless it does business in county within district; Old Wayne etc. Life Assn. v. McDonough, 164 Ind. 328, 73 N. E. 706, upholding Pennsylvania statute requiring foreign insurance companies to designate insurance commissioner or other agent for service of process; Groll v. United Elec. Co., 69 N. J. Eq. 412, 414, 60 Atl. 828, determining that foreign corporation was doing business in state.

Syl. 6 (VII, 518). Domestication of foreign corporation.

Approved in Russell v. St. Louis etc. Ry. Co., 71 Ark. 454, 457, 75 S. W. 727, 728, foreign corporation complying with Acts 1889, p. 43, c. 34, became domestic corporation with power of eminent domain.

Syl. 7 (VII, 519). Service of process on corporation.

Approved in Sidway v. Missouri Land etc. Co., 187 Mo. 673, 86 S. W. 156, where foreign corporation was licensed to do business in

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Missouri and there maintained office and process agent, it was not nonresident within statute of limitations.

Syl. 8 (VII, 519). Exercise of functions by foreign corporations.

Approved in Old Wayne etc. Life Assn. v. McDonough, 164 Ind. 326, 327, 73 N. E. 705, upholding Pennsylvania statute requiring foreign insurance companies to designate insurance commissioner or other agent for service of process.

Syl. 10 (VII, 520). Plea in bar waives plea in abatement.

Approved in McFadden v. Heisen, 150 Fed. 570, agreement to dismiss pending suit made out of court is waived by answering on merits amended bill filed thereafter.

12 Wall. 86-102, 20 L. 270, FRENCH v. SHOEMAKER.

Syl. 1 (VII, 520). When decree final and appealable.

Approved in Stout v. Stout, 104 Va. 484, 51 S. E. 834, decree in suit to construe will striking cause from docket with leave to reinstate it and seek proper relief at foot of decree is final.

12 Wall. 130-136, 20 L. 249, NEW ORLEANS ETC. MAIL CO. v. FLANDERS.

Syl. 1 (VII, 524). Appellant alone can claim reversal.

Approved in Field v. Barber Asphalt Paving Co., 194 U. S. 621, 48 L. 1153, 24 Sup. Ct. 784, cross-appeal to review only nonfederal questions decided against defendant may be taken directly to supreme court, where circuit court's jurisdiction invoked because of constitutional grounds and of diverse citizenship.

12 Wall. 150-159, 20 L. 262, BAKER v. MORTON.

Syl. 5 (VII, 526). Duress sufficient to invalidate contract.

Approved in Burnes v. Burnes, 132 Fed. 493, where surviving partner threatened to administer estate as survivor unless corporation formed and stock divided between heirs, there was no duress; First Nat. Bank v. Sargent, 65 Neb. 601, 91 N. W. 597, 59 L. R. A. 296, upholding instruction defining duress.

Syl. 7 (VII, 526). Judgment lien constitutes no right in land levied.

Distinguished in Lewis v. Atherton, 5 Okl. 94, 47 Pac. 1072, under Stat. 1893, c. 21, § 13, judgment against parties who had been seised of realty, and in whom title still appears of record, becomes lien on property though debtors had previously executed deed to third party.

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12 Wall. 167-173, 20 L. 382, THE STEAMER SYRACUSE.

Syl. 1 (VII, 527). Collision caused by towboat's negligence.

Approved in The Oceanica, 144 Fed. 305, following rule; The W. G. Mason, 142 Fed. 918, where two tugs belonging to same owner were towing steamer under contract with such owner, and master of leader directed ship's movements, rear tug, whose movements controlled by own master, not liable in rem for stranding of tow through fault of leader; Cotton v. Almy, 141 Fed. 362, where lessees of houseboat at termination of lease undertook to deliver it at port other than named in lease at owner's request, they are liable for negligent towing; Winslow v. Thompson, 134 Fed. 449, 550, 551, 67 C. C. A. 363, holding acts of tugs in attempting to pull grounded vessel over bar negligence for which consignee who employed them was liable.

Syl. 2 (VII, 528). Towboat must use care and skill.

Approved in The Britannia, 148 Fed. 499, holding tug liable for loss of scows where it had but one hawser which parted three times; The Naos, 144 Fed. 296, where charterer employed tug to tow vessel and detained tow until full tide, both charterer and tug liable for grounding of tow.

Syl. 3 (VII, 528). Collision avoidable by timely precaution.

Approved in The Inca, 130 Fed. 42, holding tug liable for grounding of tug on known obstruction where he did not warn bark which was badly steered.

Syl. 6 (VII, 529). No technical variance in admiralty.

Approved in The Minnetonka, 146 Fed. 515, upholding power of admiralty court in libel for value of jewelry stolen by employee of ship, to permit amendment of libel to conform to proof as to value.

12 Wall. 181-193, 20 L. 366, HOFFMAN v. BANK OF MILWAUKEE.

Syl. 5 (VII, 531). Innocent holder of draft accompanied by bill of lading.

Approved in Bank of Indian Territory v. First Nat. Bank, 109 Mo. App. 672, 83 S. W. 538, payment of draft by drawee cannot be avoided by him by showing he was mistaken in supposing he had money in his hands to pay it.

Syl. 7 (VII, 531). Drafts—Failure of consideration—Remote parties.

Approved in Morrison v. Farmers' etc. Bank, 9 Okl. 700, 60 Pac. 274, where bank purchased draft from drawer before maturity and gave drawer credit on deposit account for face of draft, it is purchaser for value unless it is shown that amount of deposit had not been paid prior to acceptance of draft. See 105 Am. St. Rep. 359, note.

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12 Wall. 194-201, 20 L. 378, HOWARD ETC. INS. CO. v. NORWICH ETC. TRANSP. CO.

Syl. 6 (VII, 533). Insurance—Proximate and remote cause.

Approved in Ellyson v. International etc. R. R. Co., 33 Tex. Civ. 5, 75 S. W. 870, where evidence showed intestinal trouble was prominent efficient cause of death, and that injuries only slightly contributed to it, error to charge that jury might consider injuries as cause of death, if they, in part, operating concurrently with disease, brought about result.

12 Wall. 204-226, 20 L. 370, STATE TONNAGE TAX CASES.

Syl. 12 (VII, 536). Tax on steamers as tonnage tax.

Approved in Way v. New Jersey S. B. Co., 133 Fed. 192, holding void Laws N. Y. 1897, p. 701, providing for payment of wharfage at Albany based on tonnage of ship.

12 Wall. 226-232, 20 L. 385, JUNCTION R. R. CO. v. BANK OF ASHLAND.

Syl. 4 (VII, 537). Judicial notice of state laws.

See 113 Am. St. Rep. 874, note.

Syl. 10 (VII, 538). Payment of bonds guaranteed by third party as sale.

Approved in Weed v. Gainesville etc. R. R. Co., 119 Ga. 591, 46 S. E. 894, defense of usury is not good as against bona fide purchaser of corporate bonds.

12 Wall. 232-246, 20 L. 360, UNITED STATES v. CHILD.

Syl. 1 (VII, 538). Claims—Receipt of amount of partial allowance.

Approved in County Commrs. v. Seawell, 3 Okl. 287, 41 Pac. 594, applying rule to claim against county. See 100 Am. St. Rep. 431, note.

Syl. 2 (VII, 539). Compromise of controverted claim—Duress.

Approved in Earle v. Berry, 27 R. I. 231, 61 Atl. 675, applying rule to compromise of stock transaction.

12 Wall. 246-254, 20 L. 388, UNITED STATES v. BURNS.

Syl. 6 (VII, 540). Patents—Illegal use by government.

Approved in dissenting opinion in International Postal Supply Co. v. Bruce, 194 U. S. 608, 48 L. 1138, 24 Sup. Ct. 820, majority holding patentee of improvements in stamp-canceling machine cannot enjoin postmaster from using infringing machine of which government is lessee.

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Syl. 9 (VII, 540). Court of claims—Rules of pleading.

Approved in District of Columbia v. Barnes, 197 U. S. 154, 49 L. 702, 25 Sup. Ct. 401, following rule.

12 Wall. 259-261, 20 L. 392, GERMAIN v. MASON.

Syl. 2 (VII, 541). Appeal by one codefendant alone.

Approved in Amadeo v. Northern Assur. Co., 201 U. S. 201, 50 L. 726, 26 Sup. Ct. 507, death of insured after judgment for defendant in action on policy, where insured originally named as sole plaintiff, not ground for dismissal of writ of error where insured had no interest in action and caption of declaration had been amended to show assignment; Grunberg v. United States, 145 Fed. 84, arguendo.

12 Wall. 262-275, 20 L. 423, HANNIBAL R. R. CO. v. SWIFT.

Syl. 8 (VII, 543). Baggage—Liability for other property.

Approved in New Orleans etc. R. R. Co. v. Shackelford, 87 Miss. 615, 616, 40 So. 428, carrier is liable for loss of sample case checked as baggage with knowledge of its character; Trouser v. Seaboard Air Line Ry., 139 N. C. 384, 51 S. E. 973, holding carrier liable for damage to drummer's samples carried as baggage, though no extra charges paid. See 99 Am. St. Rep. 355, note.

Syl. 10 (VII, 544). What baggage must be carried.

Approved in Choctaw etc. R. R. Co. v. Zwirtz, 13 Okl. 418, 73 Pac. 943, carrier need not carry articles intended for business use, as baggage. See 99 Am. St. Rep. 347, note.

Syl. 11 (VII, 544). Surgeon's instruments as baggage.

Approved in Yazoo etc. Railroad Co. v. Baldwin, 113 Tenn. 218, 81 S. W. 602, female's clothing, ornaments, bankbook and contents and zither key, carried in trunk, constitute baggage, though household goods are not. See 99 Am. St. Rep. 350, note.

12 Wall. 275-285, 20 L. 395, KEARNEY v. CASE.

Syl. 3 (VII, 545). Bill of exceptions necessary to review facts.

Approved in Fitzgerald v. Bassford, 142 Fed. 134, where action at law tried without jury and no special findings made, assignment that court erred in rendering judgment in favor of plaintiff presents no reviewable question.

Syl. 5 (VII, 545). Issues of fact triable by jury.

Approved in Swift v. Jones, 145 Fed. 493, circuit judge has no power, even with consent of parties, to order trial of issues in action at law before special master authorized to hear and pass on facts and report findings to court.

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12 Wall. 285-304, 20 L. 398, MILLER v. LIFE INSURANCE CO.

Syl. 2 (VII, 547). Findings may be general or special.

Approved in Anglo-American etc. Co. v. Lombard, 132 Fed. 734, 68 C. C. A. 89, determining sufficiency of special finding of court in action at law.

Syl. 5 (VII, 548). No review of general finding without exceptions.

Approved in West v. Houston Oil Co., 136 Fed. 350, 69 C. C. A. 169, applying rule in trespass to try title.

Syl. 9 (VII, 548). Presumption of credit from delivery of policy.

See 107 Am. St. Rep. 136, note.

Syl. 10 (VII, 549). Insurance—Credit by agent as payment.

Approved in Mutual Life Ins. Co. v. Abbey, 76 Ark. 331, 88 S. W. 951, upholding recovery where general agent accepted premium notes in lieu of cash, though notes not paid; Aetna Life Ins. Co. v. Fallow, 110 Tenn. 732, 733, 77 S. W. 940, where insured had been instructed by general agent not to pay premiums until collector called, and he paid collector, but general agent did not transmit premium to company until after accident, company liable; Virginia Fire etc. Ins. Co. v. Richmond Mica Co., 102 Va. 437, 102 Am. St. Rep. 846, 46 S. E. 466, where agent, with knowledge of contract to sell premises and that vendee was in possession, renewed policy, company estopped to assert forfeiture though policy provided that only certain officers could waive provisions.

Distinguished in Pennsylvania Casualty Co. v. Bacon, 133 Fed. 909, 67 C. C. A. 497, where deceased accepted accident policy providing that it was not to be effective unless premium paid prior to accident, and waivers must be signed by officers, and insurer did not charge premiums to agents until actually received, subagent could not, by accepting note for premium, waive conditions.

12 Wall. 304-307, 20 L. 405, AVERY v. UNITED STATES.

Syl. 4 (VII, 550). Audita querela where opportunity to defend.

Cited in King v. Davis, 137 Fed. 235, arguendo.

12 Wall. 323-342, 20 L. 406, VILLA v. RODRIGUEZ.

Syl. 4 (VII, 552). Quitclaim deed—Bona fide purchaser.

Approved in Lindblom v. Rocks, 146 Fed. 663, where, in ejectment to recover lot on public domain, court instructed as to other defenses, instruction that defendant had burden of establishing plaintiff's abandonment set up as defense does not withdraw other defenses.

Syl. 5 (VII, 552). Sale of redemption to mortgagee—Good faith.

Approved in Hursey v. Hursey, 56 W. Va. 157, 49 S. E. 370, applying principle where deed intended to be mortgage was contended

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to have, by subsequent agreement, changed to deed absolute; dissenting opinion in Stuart v. Hauser, 9 Idaho, 77, 72 Pac. 727, majority holding in equity suit by grantor to have deed declared mortgage, findings against grantor not disturbed where evidence conflicts.

Syl. 6 (VII, 553). Sale of redemption—Confidential relations.

Approved in Liskey v. Snyder, 56 W. Va. 623, 49 S. E. 520, following rule.

12 Wall. 342-349, 20 L. 439, HANAUER v. DOANE.

Syl. 7 (VII, 554). Recovery of money lent for illegal purpose.

Approved in McKinnon v. Waterbury, 136 Fed. 491, fact that lender caused note and mortgage taken for loan to be made payable to alien in order to escape taxation, cannot be set up as defense to foreclosure; Merchants' etc. Bank v. Ohio Valley etc. Co., 57 W. Va. 632, 50 S. E. 882, 70 L. R. A. 312, applying principle where bank discounting negotiable paper knew person from whom it took it was mere agent.

Distinguished in Schirm v. Wieman, 103 Md. 544, 63 Atl. 1057, where defendant agreed to pay for return of stolen watch and gave check to plaintiff, who indorsed it and cashed it at bank other than drawer and obtained watch with proceeds and gave it to defendant, who stopped check, which plaintiff made good on indorsement, contract to pay was valid.

12 Wall. 349-358, 20 L. 453, THOMAS v. CITY OF RICHMOND.

Syl. 4 (VII, 556). Rescission of illegal contract before execution.

Approved in dissenting opinion in Stewart v. Wright, 147 Fed. 340, majority permitting recovery by participant in fake footrace where he was given double cross.

Syl. 5 (VII, 556). Recovery under executed illegal contract.

Approved in Harriman v. Northern Securities Co., 197 U. S. 296, 49 L. 763, 25 Sup. Ct. 493, original stockholders in two competing interstate railroads cannot reclaim specific shares they delivered to holding company in exchange for its stock pursuant to illegal combination; Padilla v. Padilla, 11 N. M. 547, 70 Pac. 564, where brother recovered judgment on Indian depredation claim for property jointly owned with sister, sister may recover share of proceeds from him where he had, before judgment, agreed to pay her; dissenting opinion in Stewart v. Wright, 147 Fed. 343, majority permitting recovery by participant in fake footrace where he was double crossed.

Syl. 7 (VII, 556). Parties in pari delicto unrelievable.

Approved in dissenting opinion in Stewart v. Wright, 147 Fed. 339, 347, majority permitting participant in fake footrace swindle to recover money where he was given double cross.

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Syl. 9 (VII, 556). Recovery of money paid for illegal city bills.

Distinguished in Stewart v. Wright, 147 Fed. 336, permitting participant in fake footrace swindle to recover money where he was given double cross.

12 Wall. 358-362, 20 L. 430, SMITH v. SHEELEY.

Syl. 3 (VII, 559). Estoppel of vendor of land to corporation.

Approved in Iowa etc. Min. Co. v. United States etc. Co., 146 Fed. 440, defendant sued by foreign corporation on contract made with it cannot defend because corporation has not complied with laws relating to such corporations; Southern Trust etc. Co. v. Yeatman, 130 Fed. 800, where, on organization, corporation received stock in another corporation in payment for its stock and received dividends thereon for two years, it is for jury to say whether stockholders had ratified transaction; State v. American Book Co., 69 Kan. 10, 13, 76 Pac. 414, 415, 1 L. R. A. (N. S.) 1041, contracts with foreign corporation before it has obtained statutory permission to do business in state are not voidable at suit of one of contracting parties.

12 Wall. 362-365, 20 L. 434, UNITED STATES v. NEW ORLEANS R. R.

Syl. 3 (VII, 560). Mortgage of after-acquired property.

Approved in Cummings v. Consolidated etc. Water Co., 27 R. I. 204, 61 Atl. 356, where mortgage provided that mortgagor should not suffer mechanic's lien on property which might be held prior to mortgage, and that after-acquired property might be mortgaged for improvements, mechanic's lien for improvents on after-acquired realty had priority. See 109 Am. St. Rep. 513, note.

12 Wall. 379-384, 20 L. 414, KNOX v. EXCHANGE BANK.

Syl. 4 (VII, 564). Impairment of contracts—Assignment for creditors.

Cited in State ex rel. Louisiana Imp. Co. v. Board of Assessors, 111 La. 1001, 36 So. 98, arguendo.

12 Wall. 418-433, 20 L. 449, WARD v. MARYLAND.

(VII, 569.) Miscellaneous. Cited in State v. Weber, 96 Minn. 431, 105 N. W. 493, upholding state constitutional provision limiting right of suffrage as respects naturalized citizens to those admitted three months prior to election.

12 Wall. 440-443, 20 L. 429, WALKER v. DREVILLE.

Syl. 3 (VII, 576). Equity decrees reviewable by appeal.

Approved in Bessette v. W. B. Conkey Co., 194 U. S. 338, 48 L. 1006, 24 Sup. Ct. 665, writ of error and not appeal is mode of reviewing federal order finding one not party to suit guilty of contempt in violating restraining order.

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Syl. 4 (VII, 577). Foreclosure decree reviewable by appeal.

Approved in Behn v. Campbell, 200 U. S. 611, 50 L. 619, 26 Sup. Ct. 753, following rule.

12 Wall. 443-445, 20 L. 438, SCOTT v. UNITED STATES.

Syl. 2 (VII, 577). Contracts—Situation of parties.

Approved in dissenting opinion in Atlas Red. Co. v. New Zealand Ins. Co., 138 Fed. 513, majority refusing parol evidence to show agents knew of encumbrance, where policy indorsed "loss payable to A" as his interest may appear.

12 Wall. 457-681, 20 L. 287, THE LEGAL TENDER CASES.

Syl. 2 (VII, 580). Statutes presumed constitutional.

Approved in Board of Commrs. v. Tollman, 145 Fed. 767, upholding Laws N. C. 1885, p. 439, c. 233, incorporating railroad and authorizing issuance of county aid bonds; Ex parte Anderson, 46 Tex. Cr. 380, 81 S. W. 976, city court has no jurisdiction to try one for violation of state penal statute.

Syl. 5 (VII, 580). Power as aid to execution of power.

Approved in Ex parte Riggins, 134 Fed. 410, upholding indictment for conspiracy under Rev. St., §§ 5508, 5509, for lynching negro charged with crime to prevent his trial.

12 Wall. 681-686, 20 L. 436, BRONSON v. CHAPPELL.

Syl. 3 (VII, 584). Ratification of agent's acts by conduct.

Approved in City Bank v. Thorp, 78 Conn. 217, 61 Atl. 430, where complainant permitted assigned claims to be paid to assignor before payment of loans for which assignment made, payment is good defense to claims.

12 Wall. 687-700, 20 L. 460, TREBILCOCK v. WILSON.

Syl. 2 (VII, 586). Specie means coined dollars.

Approved in San Juan v. St. John's Gas Co., 195 U. S. 520, 49 L. 304, 25 Sup. Ct. 108, determining medium of payment on contract for lighting Porto Rico street lamps.

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XIII WALLACE.

13 Wall. 1-3, 20 L. 556, BETHEL v. MATHEWS.

Syl. 1 (VII, 589). Appellant cannot complain of favorable errors.

Approved in Pearce v. Albright, 12 N. M. 209, 76 Pac. 287, appellant cannot complain because court did not pass on appellee's demurrer and motion to strike out.

13 Wall. 3-6, 20 L. 556, NORWICH ETC. TRANSP. CO. v. FLINT.

Syl. 1 (VII, 589). Shipping—Statements of officers as res gestae.

Approved in Northern Commercial Co. v. Nestor, 138 Fed. 386, where officers of ship permitted passengers to discharge firearms on board in reckless manner, owner is liable to passenger injured.

13 Wall. 17-25, 20 L. 527, BOYDEN v. UNITED STATES.

Syl. 1 (VII, 591). Public officer insurer of moneys.

Approved in Poole v. Burnet County, 97 Tex. 84, 76 S. W. 427, county treasurer liable on bond for loss of funds which he had deposited in bank which turned out to be insolvent.

13 Wall. 40-51, 20 L. 481, TOOF v. MARTIN.

Syl. 2 (VII, 596). Insolvency defined.

Approved in Suffel v. McCartney Nat. Bank, 127 Wis. 214, 106 N. W. 839, preferential payment by one subsequently becoming bankrupt is not recoverable by his trustee merely because creditor knew of facts causing doubt as to debtor's solvency.

Distinguished in Hussey v. Richardson etc. Co., 148 Fed. 600, where creditor had sold bankrupt goods and sent attorney to look after claim, and on being told that debtor was solvent and doing good business, took chattel mortgage on stock, and debtor became bankrupt, mortgage not preference; Hardy v. Gray, 144 Fed. 925, determining that preference made where insolvent returned goods to creditor in payment of debt.

Syl. 4 (VII, 598). Bankruptcy—Transfer by debtor as preference.

Approved in In re Moody, 134 Fed. 632, where merchant sold entire stock to local firm, receiving in return farm which was taken in wife's name, and purchasers paid debt to bank of which they were stockholders, transfer was void, under Bankr. Act, § 67e; Crandall v. Coats, 133 Fed. 969, where sureties on obligations of bankrupt obtained transfer of property from him in consideration of payment of debts which they had secured, and they executed new obligations to creditors, conveyance was

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preference; Rex Buggy Co. v. Hearick, 132 Fed. 311, 65 C. C. A. 676, insolvent merchant who, within four months of involuntary bankruptcy, pays certain creditors in full and refuses others, commits act of bankruptcy within Bankr. Act, § 3a, cl. 2.

Syl. 6 (VII, 601). Bankruptcy—Transfer by insolvent creditor as preference.

Approved in Keegan v. Hamilton Nat. Bank, 163 Ind. 226, 71 N. E. 651, where corporation's directors borrowed money which was used by company, and thereafter, when it was insolvent, paid debt with money borrowed on individual notes, there was no preference; Jackmann v. Eau Claire Nat. Bank, 125 Wis. 486, 104 N. W. 105, giving of chattel mortgage, within time limited, by bankrupt to creditor to secure claim constitutes preference where undue advantage over other creditors is thereby obtained.

(VII, 596.) Miscellaneous. Cited in Goldberg v. Harlan, 33 Ind. App. 475, 67 N. E. 711, demand unnecessary before action by bankruptcy trustee to recover property unlawfully transferred by bankrupt.

13 Wall. 51-56, 20 L. 531, WHEELER v. HARRIS.

Syl. 1 (VII, 601). Affirmance without specifying sum not final.

Approved in Northern Pac. Ry. Co. v. Ely, 197 U. S. 3, 49 L. 640, 25 Sup. Ct. 302, writ of error to state court which incorrectly states date of judgment below may be dismissed without prejudice to second writ correctly giving date.

13 Wall. 66-68, 20 L. 484, RICE v. HOUSTON.

Syl. 1 (VII, 604). Citizenship—Suit by administrator.

Approved in Wiemer v. Louisville Water Co., 130 Fed. 245, fact that complainant moved to another state to acquire right to sue in federal court does not defeat jurisdiction if there was bona fide intention to acquire new citizenship.

13 Wall. 68-72, 20 L. 513, CURTIS v. WHITNEY.

Syl. 2 (VII, 606). Statute impairing contracts.

Approved in Knoxville Water Co. v. Knoxville, 200 U. S. 36, 50 L. ed. 360, 26 Sup. Ct. 224, establishment of municipal waterworks does not impair obligation of agreement by city to give exclusive franchise for thirty years; Boggs v. Ganeard, 148 Cal. 721, 84 Pac. 199, upholding Stat. 1903, p. 67, amending Pol. Code, § 3443, and providing additional method of contesting right to purchase public land, as applied to application made and certificate issued prior to act; Atwood v. Buckingham, 78 Conn. 427, 62 Atl. 618, upholding Pub. Acts 1905, p. 413, relating to amount recoverable in actions pending to recover against administrator for failure to file inventory; Miners' etc. Bank v. Snyder, 100 Md. 65, 108 Am. St. Rep. 390, 59 Atl. 708, 68 L. R. A. 312, upholding

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Acts 1904, p. 597, substituting remedy by bill in equity in behalf of all creditors against all stockholders, as applied to one who has sued individually under old law but has not obtained judgment; Rauen v. Prudential Ins. Co., 129 Iowa, 731, 106 N. W. 200, arguendo.

Syl. 3 (VII, 606). Retroactive laws—Notice of tax sale.

Approved in Lamb v. Powder Riv. etc. Co., 132 Fed. 438, 67 L. R. A. 558, 65 C. C. A. 570, Colo. Sess. Laws 1895, p. 239, changing limitation of actions on foreign judgments is void as to foreign judgment rendered prior to its passage; Harrison v. Thomas, 103 Va. 335, 49 S. E. 486, under Acts 1901, p. 779, four months' notice required therein to be given by purchaser at tax sale need not be given where two years for redemption expired before act took effect.

13 Wall. 72-91, 20 L. 485, JOHNSON v. TOWSLEY.

Syl. 3 (VII, 608). Land officer's action conclusive.

Approved in Miller v. Margerie, 149 Fed. 697, under Comp. St. 1901, p. 1467, deed of Alaska townsite trustee not set aside for fraud, unless particular facts which prevented complainants from having notice of proceedings and opportunity to protect rights; Peyton v. Desmond, 129 Fed. 9, 63 C. C. A. 651, homestead patentee may recover value of timber wrongfully cut from land between initiation of claim and issuance of patent; Semer v. Auditor General, 133 Mich. 574, 95 N. W. 734, where lands bid off to state for taxes without application to redeem and town board requested examination by proper officers, who filed statutory report, land owner cannot object to report; Cagle v. Dunham, 14 Okl. 615, 78 Pac. 562, refusing to set aside decision of Land Department on allegation of perjury by witnesses at trial before department; Oklahoma City v. Hill, 6 Okl. 129, 50 Pac. 247, under act opening Oklahoma, one entering lot for townsite purpose in violation of act, who is unlawfully dispossessed by city authorities, cannot claim damages for trespass; Barnes v. Newton, 5 Okl. 431, 48 Pac. 192, enjoining unsuccessful claimant before Land Department from interfering with occupation of disputed premises; Calhoun v. Violet, 4 Okl. 325, 47 Pac. 481, applying rule in suit to declare holder of legal title of homestead a trustee for benefit of claimant of superior equitable title; Woodruff v. Wallace, 3 Okl. 361, 378, 41 Pac. 359, 365, one whose homestead entry has been canceled for fraud in its inception cannot avail himself of occupying claimant's act, and district court may enjoin him from interfering with successful applicant; Laramie Nat. Bank v. Steinhoff, 11 Wyo. 308, 71 Pac. 994, where no patent issued, court in action by possessor under certificate of purchase against entryman, cannot determine title.

Syl. 4 (VII, 613). Equity jurisdiction to correct mistakes in patents.

Approved in Paine v. Foster, 9 Okl. 223, 53 Pac. 112, following rule; Southern Cross etc. Co. v. Sexton, 147 Cal. 762, 82 Pac. 424, where, by mistake of Land Department, notice to adverse claimants of application for mining patent did not contain sufficient description, but cer-

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tificate of purchase issued, and long after republication order made, order canceling certificate as of date of republication order was erroneous.

Limited in dissenting opinion in Paine v. Foster, 9 Okl. 274, 60 Pac. 29, majority following rule.

Syl. 5 (VII, 613). Decision of land receiver—Vested rights.

Approved in Bockfinger v. Foster, 10 Okl. 502, 62 Pac. 803, townsite trustees are not trustees for use of one claiming adversely to trust created by act of Congress under which patent was issued to them.

Syl. 6 (VII, 614). Equitable trustee—Mistake in passing of title.

Approved in Smith v. Townsend, 1 Okl. 122, 29 Pac. 82, and Adams v. Couch, 1 Okl. 39, 26 Pac. 1016, both following rule; Humbird v. Avery, 195 U. S. 503, 49 L. 297, 25 Sup. Ct. 123, refusing, prior to final action of Land Department, to determine rights of grantee of railroad of land claimed within indemnity limits and purchasers from government; Jones v. Hoover, 144 Fed. 220, under 23 Stat. 340, and 32 Stat. 730, relating to Umatilla Indian lands, purchaser of one hundred and sixty acres untimbered land under first act could not buy under second; Tegarden v. Le Marchel, 129 Fed. 488, in ejectment in federal court equitable title cannot be set up to defeat legal title by impeaching government patent; Johnson v. Pacific Coast S. S. Co., 2 Alaska, 238, upholding jurisdiction to set aside townsite patent; Thompson v. Ferry, 6 Ariz. 306, 56 Pac. 743, holding parties barred by laches to claim trust; Love v. Flahive, 33 Mont. 354, 83 Pac. 883, where applications for homestead entry on same land were filed simultaneously, finding of Secretary of Interior that applicant who had preserved right to land intact since should be preferred over other who had abandoned right was proper; McDonald v. Union Pac. Ry. Co., 70 Neb. 350, 97 N. W. 441, denying jurisdiction to compel conveyance of lands subject to homestead entry to one who has been denied privilege of entry by land department; Wilbourne v. Baldwin, 5 Okl. 280, 47 Pac. 1050, refusing to enjoin Indian agent from removing homestead applicant from land; Brown v. Parker, 2 Okl. 266, 39 Pac. 569, filing certificates issued by probate judge prior to entry have no legal force; dissenting opinion in Sproat v. Durland, 2 Okl. 52, 35 Pac. 888, majority holding court may, on answer and cross-complaint, enjoin homestead claimant from interfering with adversary's possession; Laramie Nat. Bank v. Steinhoff, 11 Wyo. 306, 310, 71 Pac. 994, 995, where no patent has issued, court, in action by possessor under certificate of purchase against entryman, cannot determine title.

Distinguished in Watt v. Amos, 14 Okl. 180, 79 Pac. 109, declaring holder of legal title a trustee though no fraud shown.

Syl. 7 (VII, 618). Land officer's decision final—Equitable relief.

Approved in Hartwell v. Havighorst, 196 U. S. 635, 49 L. 629, 25 Sup. Ct. 793, Estes v. Timmons, 12 Okl. 540, 544, 73 Pac. 304, 305,

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and Adams v. Couch, 1 Okl. 34, 35, 40, 26 Pac. 1015, 1017, all following rule; Kerns v. Lee, 142 Fed. 988, applying principle under swamp land act of 1850; Le Marchel v. Teegarden, 133 Fed. 827, one attacking land patent must plead and prove evidence before Land Department from which mistake resulted, particular mistake made, and how it occurred; Smith v. Love, 49 Fla. 239, 38 So. 379, applying rule where fraud alleged; Cook v. McCord, 9 Okl. 209, 60 Pac. 500, applying rule to finding of Land Department that lot had been abandoned by claimant; Black v. Jackson, 6 Okl. 754, 52 Pac. 407, where Land Department makes final award of adverse claims, loser cannot continue residence on land to bring suit to declare trust against adversary; Cummings v. McDermid, 4 Okl. 280, 44 Pac. 278, applying rule where award of townsite trustees attacked; King v. Thompson, 3 Okl. 647, 39 Pac. 467, applying principle to acts of townsite trustees; dissenting opinion in Paine v. Foster, 9 Okl. 261, 60 Pac. 25, majority following rule.

13 Wall. 92-104, 20 L. 534, GIBSON v. CHOUTEAU.

Syl. 1 (VII, 624). Limitations against state.

Approved in Hagerman v. Territory, 11 N. M. 160, 66 Pac. 526, action in name of territory for delinquent taxes which are property of county in which they are assessed is not barred by limitations. See 101 Am. St. Rep. 151, 152, 153, 165, 182, note.

Syl. 3 (VII, 627). State statutes cannot impair patent.

Approved in Tegarden v. Le Marchel, 129 Fed. 488, 490, following rule; Tyee Consol. Min. Co. v. Langstedt, 136 Fed. 127, 69 C. C. A. 548, there is no disseisin sufficient to start limitations as against locator of mining claim prior to issuance of patent; Peyton v. Desmond, 129 Fed. 10, 63 C. C. A. 651, homestead patentee may recover value of timber wrongfully cut after initiation of claims and prior to issuance of patent; Cook v. McCord, 13 Okl. 510, 75 Pac. 295, unsuccessful contestant for townsite lot, who, pending contest, made improvements thereon, cannot hold possession until improvements paid for under state occupying claimant's land.

Syl. 4 (VII, 628). Equity—Doctrine of relation.

Approved in Peyton v. Desmond, 129 Fed. 11, 63 C. C. A. 651, homesteader may recover value of timber wrongfully cut after initiation of claim and prior to issuance of patent; Krakow v. Wille, 125 Wis. 288, 103 N. W. 1123, where contract for sale of land provides for delivery of deed after certain portion of price paid, title vests as of date of contract.

Distinguished in Tyee Consol. Min. Co. v. Langstedt, 1 Alaska, 443, 445, 447, ten year statute of limitations begins to run in favor of adverse possessor of part of mining claim from time of location.

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Syl. 5 (VII, 628). Title to public land commences when.

Approved in United States v. Detroit Timber etc. Co., 200 U. S. 335, 50 L. 505, 26 Sup. Ct. 282, applying rule to purchaser of timber land from patentees for value and without notice of fraud on part of original entrymen; United States v. Anderson, 194 U. S. 399, 48 L. 1039, 24 Sup. Ct. 716, government cannot, as against its grantees of land within indemnity limits of railroad grant, retain sum collected from trespassers for removal of stone between selection and approval of selection.

Syl. 6 (VII, 629). Doctrine of relation—Public lands.

Approved in Peyton v. Desmond, 129 Fed. 11, 63 C. C. A. 651, homesteader may recover value of timber wrongfully cut after initiation of claim and prior to issuance of patent; Gilbert v. McDonald, 94 Minn. 291, 110 Am. St. Rep. 370, 102 N. W. 713, interest of assignee of soldier's additional homestead certificate, upon filing of application for specific tract, may be transferred by quitclaim.

Syl. 7 (VII, 631). Ejectment—Legal title necessary.

Approved in Tegarden v. Le Marchel, 129 Fed. 488, following rule.

Syl. 8 (VII, 631). Patent passes government title—Superior equities.

Approved in Tyee Consol. Min. Co. v. Langstedt, 136 Fed. 126, 69 C. C. A. 548, there is no disseisin sufficient to start limitations as against locator of mining claim prior to issuance of patent; Tegarden v. Le Marchel, 129 Fed. 489, 491, defendant in ejectment cannot recover for improvements made before patent issued to plaintiff; Smith v. Love, 49 Fla. 239, 38 So. 379, upholding jurisdiction to convert holder of legal title into trustee for true owner where patent should have gone to another.

Distinguished in Blumer v. Iowa R. R. Land Co., 129 Iowa, 38, 105 N. W. 344, as against railroad entitled to land under grant limitations run in favor of timber-culture occupant from time of latter's entry under receiver's certificate.

Syl. 11 (VII, 632). Occupation for statutory period—Public lands.

Approved in Tegarden v. Le Marchel, 129 Fed. 491, defendant in ejectment cannot recover for improvements made before patent issued to plaintiff; Slaght v. Northern Pac. Ry. Co., 39 Wash. 582, 81 Pac. 1064, limitations do not run against settler on government land till patent issues.

Distinguished in Tyee Consol. Min. Co. v. Langstedt, 1 Alaska, 464, mining locator acquires present vested estate in claim which he may defend by ejectment.

13 Wall. 104-128, 20 L. 585, NORWICH ETC. TRANSP. CO. v. WRIGHT.

Syl. 2 (VII, 633). Ship owner's liability for master's negligence.

Approved in The W. G. Mason, 142 Fed. 919, where two tugs belonging to same owner were towing ship, rear tug, which did not

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control tow, was not liable in rem for stranding of tow through fault of leader; The Sacramento, 131 Fed. 374, where petition in admiralty to limit liability of vessel and cargo for collision failed to state facts, by reason of which exemption claimed, it was insufficient to permit contest of question of vessel's fault.

Syl. 2 (VII, 633). Ship owner's limitation of liability.

Approved in The Lotta, 150 Fed. 221, where there was only one claimant against vessel for negligent death, owner could set up limited liability as defense in state court; Hagan v. City of Richmond, 104 Va. 733, 52 S. E. 389, 3 L. R. A. (N. S.) 1120, holding void city ordinance declaring harbor commissioners shall remove wrecks injurious to harbor at owner's expense.

13 Wall. 128-150, 20 L. 519, UNITED STATES v. KLEIN.

Syl. 3 (VII, 639). Pardon blots out offense.

See 111 Am. St. Rep. 109, note.

13 Wall. 154-156, 20 L. 614, ARMSTRONG v. UNITED STATES.

Syl. 2 (VII, 641). Judicial notice of executive proclamation.

Approved in Sprinkle v. United States, 141 Fed. 820, in prosecution of violation of internal revenue laws, rules and regulations of Internal Revenue Department are admissible.

13 Wall. 158-162, 20 L. 490, SEMMES v. HARTFORD INS. CO.

Syl. 2 (VII, 642). Insurance—Limitation as to suit—Impossibility of performance.

Approved in Lynchburg etc. Mill Co. v. Travelers' Ins. Co., 149 Fed. 957, where insured in employer's liability policy participated in negotiations for settlement for three months after expiration of time limit in policy, contract limitation was absolutely waived.

Distinguished in Lynchburg etc. Co. v. Travelers' Ins. Co., 140 Fed. 721, 723, where insurer negotiated for settlement after expiration of contract limitation, such limitation not absolutely waived but merely suspended.

13 Wall. 162-165, 20 L. 566, REICHE v. SMYTHE.

Syl. 2 (VII, 644). Statutory construction.

Approved in State v. Eldredge, 27 Utah, 488, 76 Pac. 341, construing proviso in Const., art. 13, § 11, that board of equalization shall "also perform such other duties as may be prescribed by law."

Syl. 3 (VII, 644). Statutes—Construction of words.

Approved in United States v. Boden, 133 Fed. 840, canned pineapples containing sugar for flavoring only are liable for lower rate provided for by par. 263 of Act of 1897; Brennan v. United States, 129 Fed.

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838, pickled limes are dutiable under par. 266 of Tariff Act of 1897, and not free under par. 559.

13 Wall. 166-182, 20 L. 557, PUMPELLY v. GREEN BAY ETC. CANAL CO.

Syl. 2 (VII, 646). Eminent domain—Right to compensation.

Approved in dissenting opinion in Chicago etc. Ry. Co. v. Illinois, 200 U. S. 598, 50 L. 611, 26 Sup. Ct. 341, majority holding imposition on railroad of entire cost of removing and rebuilding of bridge made necessary by widening of channel by authorized officials not a "taking."

Syl. 3 (VII, 647). Eminent domain—What is "taking."

Approved in Barron v. Memphis, 113 Tenn. 92, 106 Am. St. Rep. 810, 80 S. W. 833, where city enlarged bridge pier and thereby diverted current so that water overflowed land and eroded it, there was a "taking"; Town of Nahaut v. United States, 136 Fed. 285, 69 L. R. A. 723, 70 C. C. A. 641, arguendo.

Syl. 4 (VII, 648). Eminent domain—Flooding land as taking.

Approved in Manigault v. Springs, 199 U. S. 484, 50 L. 280, 26 Sup. Ct. 127, flooding of lands consequent on erection of dam under statutory authority is not "taking" where flooding can be prevented by raising height of dikes; Wright v. Austin, 143 Cal. 242, 101 Am. St. Rep. 97, 76 Pac. 1025, 65 L. R. A. 649, county cannot bore wells in highway and use subterranean water for sprinkling it; Baltimore etc. R. R. Co. v. Sattler, 100 Md. 329, 59 Atl. 658, owner of property injured by smoke and vibration of passing trains may recover without proof of negligence by railroad; Matheny v. Aiken, 68 S. C. 177, 47 S. E. 61, owner of land outside city whose property is damaged by sewage emptying into stream is limited to statutory action for compensation, and cannot sue city to abate nuisance; Stockdale v. Rio Grande etc. Ry. Co., 28 Utah, 212, 77 Pac. 852, applying rule where switch-track erected on adjoining lands caused loss and inconvenience; Tracewell v. Wood County Court, 58 W. Va. 290, 52 S. E. 188, where municipal corporation by drainage ditch made along road collects surface water and casts it on land, it is liable for damage caused thereby; Lathrop v. Racine, 119 Wis. 473, 97 N. W. 196, Racine charter provisions requiring land owners along river to build docks void as not providing for determination of special benefits. See 109 Am. St. Rep. 905, 906, 916, note.

(VII, 645). Miscellaneous. Cited in Matheny v. Aiken, 68 S. C. 174, 47 S. E. 60, fifth amendment is limitation on federal and not state government.

13 Wall. 190-222, 20 L. 550, PENNSYLVANIA COLLEGE CASES.

Syl. 5 (VII, 657). Amendment of corporate franchises.

Approved in State v. U. S. Grant University, 115 Tenn. 247, 249, 250, 90 S. W. 297, where educational institution transferred all its

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property and corporate franchises to charitable society to transfer property to new corporation, and then ceased to perform its functions, its trustee cannot sue in its behalf.

13 Wall. 222-236, 20 L. 617, INSURANCE CO. v. WILKINSON.

Syl. 2 (VII, 658). Insurance—Disclosure of injuries.

Approved in Rupert v. Supreme Court U. O. F., 94 Minn. 298, 102 N. W. 717, when questions to insurance applicant are in such terms as to include trivial ailments unconnected with any specific disease, they refer only to ailments affecting risk.

Syl. 4 (VII, 658). Reformation of instruments for mistake by parol.

Approved in Lyon v. United Moderns, 148 Cal. 476, 83 Pac. 807, where insured in good faith made truthful answers to questions in application, but answers were not correctly transcribed by medical examiner, insurer could not assert falsity of answers as defense; Farmers' etc. Ins. Co. v. Jackman, 35 Ind. App. 18, 73 N. E. 736, where at time of policy insured owned property in fee but later conveyed it to son, retaining life interest, and officers said no change in policy necessary, condition as to character of title waived.

Limited in Connecticut Fire Ins. Co. v. Buchanan, 141 Fed. 891, 892, refusing parol evidence of statements of agent as to necessity for obtaining vacancy permit where policy provided for cancellation if premises became vacant.

Syl. 5 (VII, 661). Estoppel by conduct.

Approved in Frels v. Lillie Black F. M. Ins. Co., 120 Wis. 598, 98 N. W. 524, where insurer ordered payment of loss in ninety days and in ten days was informed that policy held by assignee, and they notified latter that garnishment proceedings were pending, insurer estopped to set up contract limitation where garnishment proceedings dismissed after expiration of limit.

Limited in Dimick v. Metropolitan Life Ins. Co., 69 N. J. L. 399, 55 Atl. 297, 62 L. R. A. 774, untrue answers entered by medical examiner and signed by applicant render policy void where answers are warranties under contract.

Syl. 6 (VII, 662). Powers of insurance agent.

Approved in American Tel. etc. Co. v. Green, 164 Ind. 357, 73 N. E. 709, applying rule where agent arranged consideration for release of claims for damages; Cullinan v. Bowker, 180 N. Y. 97, 72 N. E. 912, where clerk of agent authorized to execute liquor law bonds for his company issued bond, certificate for which had been forfeited, and later agent, in ignorance of forfeiture, signed bond, company not liable; Starr v. Mutual Life Ins. Co., 41 Wash. 233, 83 Pac. 118, where solicitor executed receipt to applicant making insurance in force from date of receipt if application accepted and policy issued, insurer es-

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topped to deny agent's authority; Medley v. German etc. Ins. Co., 55 W. Va. 349, 350, 47 S. E. 104, applying rule where title of fee to property was not in insured.

Syl. 7 (VII, 663). Insurance—Declarations and acts of local agent.

Approved in State Mut. Ins. Co. v. Latourette, 71 Ark. 247, 100 Am. St. Rep. 63, 74 S. W. 302, where local agent, who forwards applications, receives policies and accepts premiums, is informed by applicant, prior to delivery of policy, that title is in another, delivery waives condition requiring title to be in insured; Nute v. Hartford Fire Ins. Co., 109 Mo. App. 596, 83 S. W. 86, where applicant correctly informed agent of state of title, insurer cannot defeat recovery because policy misstated title; German Ins. Co. v. Shader, 68 Neb. 8, 93 N. W. 975, 60 L. R. A. 918, admitting parol evidence of waiver of conditions in policy by agent; Aetna Life Ins. Co. v. Fallow, 110 Tenn. 734, 77 S. W. 940, applying rule where agent waived provision as to payment of premium in advance. See 107 Am. St. Rep. 122, note.

Distinguished in Deming Inv. Co. v. Shawnee Ins. Co., 16 Okl. 11, 83 Pac. 921, holding company not liable where agent's limited authority was known to applicant who made false statement as to encumbrances, though condition of title known to agent.

Syl. 8 (VII, 668). Insurance—Agent preparing application.

Approved in Connecticut Fire Ins. Co. v. Buchanan, 141 Fed. 893, refusing parol evidence of statements of agents as to necessity for obtaining vacancy permit where policy provided for cancellation if premises became vacant; Bushnell v. Farmers' etc. Ins. Co., 110 Mo. App. 228, 85 S. W. 103, applying rule where there were encumbrances on property not mentioned in application.

13 Wall. 236-243, 20 L. 624, EX PARTE McNEIL.

Syl. 4 (VII, 673). State pilotage laws valid.

Approved in Olsen v. Smith, 195 U. S. 341, 49 L. 229, 25 Sup. Ct. 52, upholding Texas pilotage laws.

Syl. 7 (VII, 674). Right created by state statute—Federal courts.

Approved in Mathews Slate Co. v. Mathews, 148 Fed. 493, federal court has no jurisdiction over suit brought under Massachusetts statute giving courts equity jurisdiction over suit by creditor to apply in payment of debt property of debtor which cannot be attached at law; Barber Asphalt etc. Co. v. Morris, 132 Fed. 949, 67 L. R. A. 761, 66 C. C. A. 55, provision of city charter for appeals from allowance or rejection of claims to district court and prohibiting payment of claims pending appeal does not restrict federal jurisdiction; Madisonville etc. Co. v. St. Bernard Min. Co., 130 Fed. 792, upholding removability of suit for condemnation of railroad right of way by Kentucky corporation against citizen of another state; The Sue 137 Fed. 135, arguendo.

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Distinguished in Illinois Life Ins. Co. v. Newman, 141 Fed. 450, denying federal equity jurisdiction to enjoin collection of state tax on ground of its illegality, though such power is conferred by state statute; Anthony v. Burrow, 129 Fed. 789, denying federal equity jurisdiction to require state officer to certify nomination of certain person as candidate for Congress.

13 Wall. 244-251, 20 L. 539, BATH COUNTY v. AMY.

Syl. 1 (VII, 676). Circuit court's power to issue mandamus.

Approved in Ex parte Massachusetts, 197 U. S. 488, 49 L. 848, 25 Sup. Ct. 512, denying jurisdiction to issue extraordinary writs to restrain proceedings in equity cause; Ex parte Moran, 144 Fed. 596, upholding jurisdiction of circuit court of appeals to issue habeas corpus to determine power of Oklahoma court to imprison one convicted of capital crime; United States v. Norfolk etc. Ry. Co., 138 Fed. 851, denying mandamus to compel interstate railroad to equitably distribute cars according to contract; Barber Asphalt etc. Co. v. Morris, 132 Fed. 953, 67 L. R. A. 761, 66 C. C. A. 55, granting mandamus to compel circuit judge to vacate order staying proceedings pending state court appeal; Mystic Milling Co. v. Chicago etc. Ry. Co., 132 Fed. 292, denying jurisdiction of mandamus proceeding on removal; Kelly v. Grand Circle, W. O. W., 129 Fed. 831, proceeding for mandamus by motion and affidavits as authorized by Bal. (Wash.) Code, § 5765, authorizing assessment of damages on judgment for applicant, is not removable.

Syl. 2 (VII, 677). Mandamus issuable by circuit court.

Approved in Barber Asphalt etc. Co. v. Morris, 132 Fed. 952, 67 L. R. A. 761, 66 C. C. A. 55, granting mandamus to compel circuit judge to vacate order staying proceedings pending state court appeal.

13 Wall. 254-257, 20 L. 681, UNITED STATES v. WILDER.

Syl. 3 (VII, 679). Part payment as affecting limitations.

Approved in Good v. Ehrlich, 67 Kan. 97, 72 Pac. 546, applying rule where payment made on note.

13 Wall. 257-263, 20 L. 635, KLINGER v. MISSOURI.

Syl. 1 (VII, 680). State record showing federal question.

Approved in Allen v. Arguimbau, 198 U. S. 155, 49 L. 993, 25 Sup. Ct. 662, defense, in action on note given for promise to have cigars under certain contract, that it was contemplated that cigars were to be taken from factory without complying with federal statute, raises no federal question.

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13 Wall. 264-268, 20 L. 568, WILMINGTON R. R. CO. v. REID.

Syl. 4 (VII, 683). Taxation—Scope of exemption of corporation's property.

Approved in Southwestern Tel. etc. Co. v. San Antonio, 32 Tex. Civ. 102, 73 S. W. 860, franchises of corporation exercised by it in city are property, within city's charter taxing all property.

13 Wall. 270-291, 20 L. 571, CHICAGO & N. W. RY. CO. v. WHITTON.

Syl. 1 (VII, 686). Corporation citizen of state of creation.

Approved in Lee v. Atlantic etc. R. Co., 150 Fed. 796, where Virginia railroad was merged with foreign railroad and stock in latter canceled for stock in former, former continued to exist as Virginia corporation; Western Union Tel. Co. v. Pittsburg etc. Ry. Co., 137 Fed. 437, in federal suit for specific performance of right of way contracts with consolidated railroad companies, it is immaterial that portion of property affected is outside district; Baltimore etc. R. R. Co. v. Allen, 58 W. Va. 398, 112 Am. St. Rep. 985, 52 S. E. 469, 3 L. R. A. (N. S.) 608, railroads chartered by other states but operating roads here may be proceeded against as garnishees irrespective of situs of debts.

Syl. 2 (VII, 687). Citizenship of corporation chartered by two states.

Approved in United States v. Milwaukee etc. Transit Co., 142 Fed. 254, upholding sufficiency of bill to enjoin rebating where officers of corporation formed transit company which made carriage contracts for it and received commissions for obtaining business; Dodd v. Louisville Bridge Co., 130 Fed. 195, denying removal where consolidated railroad sued citizen of one of states of incorporation of one of constituent companies; Russell v. St. Louis etc. Ry. Co., 71 Ark. 457, 75 S. W. 728, foreign railroad complying with Acts 1889, p. 43, c. 34, becomes domestic and may exercise right of eminent domain.

Syl. 4 (VII, 691). State statute cannot restrict federal jurisdiction.

Approved in Barber Asphalt etc. Co. v. Morris, 132 Fed. 949, 67 L. R. A. 761, 66 C. C. A. 55, city charter prohibiting payment of claims pending appeal from their allowance or rejection does not affect federal jurisdiction.

13 Wall. 291-297, 20 L. 562, MYERS v. CROFT.

Syl. 2 (VII, 697). Vendor cannot question vendee's capacity.

Approved in Clark v. Sayers, 55 W. Va. 526, 47 S. E. 318, where one conveys land with general warranty, and he afterward acquires good title, acquisition inures to grantee's benefit.

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Syl. 3 (VII, 697). Assignment of right of pre-emption.

Approved in United States v. Clark, 200 U. S. 607, 50 L. 616, 26 Sup. Ct. 340, purchaser of timber lands after issuance of receiver's final receipts is bona fide purchaser as against cancellation for frauds of entryman; McElhaney v. McElhaney, 125 Iowa, 282, 101 N. W. 91, where, after husband contracted to give wife half of all after-acquired property, he entered timber claim, and both spouses resided on land till after patent issued, agreement valid as to such land; Flanagan v. Forsythe, 3 Okl. 236, 50 Pac. 155, lands entered as homestead are not exempt from liability for debts after final proof made and final or patent certificate issued; Tecumseh State Bk. v. Maddox, 4 Okl. 594, 46 Pac. 567, relinquishment of preferential right to enter on public lands and agreement to sell personalty and improvements thereon are good consideration for assignment of moneys; dissenting opinion in Hafemann v. Gross, 199 U. S. 352, 50 L. 226, 26 Sup. Ct. 80, majority upholding contract by which pre-emptioner agreed in consideration of advances to pay sum for locating him on land and percentage of proceeds of sale made after acquiring title.

Syl. 4 (VII, 699). Alienability of lands prior to patent.

Approved in Adams v. Church, 193 U. S. 517, 48 L. 772, 24 Sup. Ct. 512, argument by entryman under timber culture act to convey claim to proposed partnership as soon as he should acquire title is not void.

13 Wall. 297-306, 20 L. 579, PENDLETON COUNTY v. AMY.

Syl. 1 (VII, 699). Action by bearer of bonds—Denial.

Approved in Berry v. Barton, 12 Okl. 236, 71 Pac. 1079, 66 L. R. A. 513, where petition in action on note recites execution to plaintiff for valuable consideration and default in payment, answer denying that plaintiff is owner and holder and alleging that he is not real party in interest states no defense.

13 Wall. 306-311, 20 L. 683, WILLIAMS v. KIRTLAND.

Syl. 2 (VII, 702). Binding effect of state statutory construction.

Approved in Southern Pac. Co. v. Western Pac. Ry. Co., 144 Fed. 179, determining title to Oakland waterfront.

13 Wall. 311-328, 20 L. 581, DELAWARE ETC. CANAL CO. v. CLARK.

Syl. 1 (VII, 702). Protection of words used as trademark.

Approved in Gruber Almanack Co. v. Swingley, 103 Md. 376, 63 Atl. 686, holding misrepresentations on book did not deprive complainant of right to enjoin infringement of trademark.

Distinguished in Smith-Dixon Co. v. Stevens, 100 Md. 124, 59 Atl. 404, refusing to restrain sale of bags containing imitation of plain-

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tiff's advertisement where plaintiff had printed form of label which he had registered for another company for long time prior to filing it with Secretary of State.

Syl. 2 (VII, 703). Object of trademark stated.

Approved in Hygeia etc. Water Co. v. Consolidated Ice Co., 144 Fed. 141, word "Hygeia" as name for distilled water used for long time becomes trademark; Dennison Mfg. Co. v. Scharf etc. Co., 135 Fed. 628, 68 C. C. A. 263, series of numbers used by label-maker in catalogues and in connection with name on boxes containing labels, to designate style of label, is not trademark.

Syl. 3 (VII, 704). Essence of wrong in trademark infringement.

Approved in Dennison Mfg. Co. v. Scharf Tag etc. Co., 135 Fed. 634, 68 C. C. A. 263, series of numbers used by label-maker in catalogues and in connection with name on boxes containing labels, to designate style, is not trademark; Galena etc. Oil Co. v. Fuller, 142 Fed. 1007, trademark consisting of five-pointed star with word "Galena" above, and word "Oil" below it, and letter "G" in center, not infringed by six-pointed star made of triangles and having words "Extra Star"; Scriven v. North, 134 Fed. 370, 67 C. C. A. 348, applying rule where elastic seam drawers were imitated and advertised and sold as complainant's; Woodcock v. Guy, 33 Wash. 242, 74 Pac. 360, where petition to enjoin infringement of nonregistered trademark asked protection of plaintiff in exclusive use of word, but failed to charge that defendant had simulated labels, it was insufficient.

Syl. 4 (VII, 705). Trademark cannot give monopoly of other's goods.

Approved in Diamond Watch Co. v. Saginaw Match Co., 142 Fed. 729, manufacturer, without patent, of tipped matches, head and tip are of different colors, is not entitled to monopoly of colors.

Syl. 5 (VII, 707). Trademarks—Geographical name.

Approved in Buzby v. Davis, 150 Fed. 278, use of word "Keystone" by one manufacturer in his trade name to palm them off as those of another is enjoinable.

Distinguished in Nesne v. Sundet, 93 Minn. 302, 101 N. W. 492, corporation enjoined from using trade name lawfully adopted prior to its incorporation by partnership engaged in like business at same place.

Syl. 6 (VII, 709). Application as truthful when used by defendant.

Approved in Howe Scale Co. v. Wyckoff, 198 U. S. 140, 49 L. 986, 25 Sup. Ct. 609, maker of typewriters under name "Remington" cannot enjoin Remington and Sholes from using name "Remington-Sholes" on machines.

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(VII, 702.) Miscellaneous. Cited in Saxlehner v. Eisner, 140 Fed. 940, there is little analogy between trademark property rights and patents for inventions.

13 Wall. 329-335, 20 L. 696, THE PATAPSCO.

Syl. 1 (VII, 709). Supplies to ship in foreign port.

Approved in The Wyandotte, 136 Fed. 473, where charterer's agent in foreign port procured libelant to purchase master's draft for payment of necessaries, owners cannot offset against same demurrage claims against charterers; The Surprise, 129 Fed. 875, 64 C. C. A. 309, supplies furnished vessel on order of master in foreign port create lien though vessel navigated by charterer, who is bound to make disbursements and protect vessel from liens.

Distinguished in The New Brunswick, 129 Fed. 895, 64 C. C. A. 325, where place of business of corporation which is owner of vessel is at port in state other than that of its creation, master cannot impress lien for supplies in that port, where furnisher knew facts.

13 Wall. 335-357, 20 L. 646, BRADLEY v. FISHER.

Syl. 3 (VII, 713). Liability of judges for official acts.

Approved in Mitchell v. Galen, 1 Alaska, 341, where justice of peace collusively issues warrant for arrest of mine owner for trespass on his own property, so that he may be removed therefrom, and others acting with judge may take possession, he is civilly liable; McVeigh v. Ripley, 77 Conn. 141, 58 Atl. 703, where theft of horse punishable by imprisonment, and theft of property of value of $15 punishable by fine of not over $7, where justice fined horse thief $5 and committed him until fine paid, justice not liable for false imprisonment; Comstock v. Eagleton, 11 Okl. 492, 69 Pac. 957, probate judge, in rendering judgment in bastardy case, is not liable for false imprisonment though judgment is erroneous.

Syl. 4 (VII, 714). Judge's liability for action within jurisdiction.

Approved in Bohri v. Barnett, 144 Fed. 390, false imprisonment based on arrest and conviction for violation of void ordinance does not lie against trial judge, constable and prosecuting attorney where magistrate had jurisdiction over violations of ordinances; United States v. Bell, 135 Fed. 338, 68 C. C. A. 144, where plaintiff's claim offered for filing in federal court against state judge of general jurisdiction showed on face lack of cause of action against them, he was not injured by clerk's refusal to file papers; Rush v. Buckley, 100 Me. 331, 61 Atl. 778, 70 L. R. A. 464, municipal judge issuing warrants and trying case for violation of ordinance which never was legally passed is not liable for damages.

Syl. 5 (VII, 715). Inherent power to disbar attorneys.

Approved in dissenting opinion in In re Waugh, 32 Wash. 59, 72 Pac. 713, majority holding supreme court has no inherent original

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jurisdiction of proceedings to disbar an attorney for fraud on superior court in procuring admission to practice.

13 Wall. 363-366, 20 L. 653, ROBINSON v. UNITED STATES.

Syl. 1 (VII, 717). Evidence of custom to explain contract.

Approved in Snoqualmi Realty Co. v. Moynihan, 179 Mo. 643, 78 S. W. 1018, where building contract required "San Domingo mahogany," evidence admissible that such phrase meant mahogany equal in density to that grown in San Domingo.

Syl. 2 (VII, 718). Usage considered when contract made.

Approved in Cleveland-Cliffs etc. Co. v. East Itasca etc. Min. Co., 146 Fed. 235, construing contract for assignment of mining leases with reference to manner of conducting explorations; Northern Pac. Ry. Co. v. Kempton, 138 Fed. 995, where stock carriage contract was silent as to time and manner of performance, evidence of custom to furnish independent train transportation of stock of over ten carloads is admissible; Lillard v. Kentucky Dist. etc. Co., 134 Fed. 174, 175, 67 C. C. A. 74, evidence of custom is admissible to show that contract for delivery of distillery slop at cattle-feeding lot contemplated that lot be supplied with suitable pens equipped with troughs and pipes; Security Trust Co. v. Robb, 142 Fed. 84, arguendo.

Distinguished in Lillard v. Kentucky Distilleries etc. Co., 134 Fed. 183, 185, 67 C. C. A. 74, evidence of custom is inadmissible to show that contract for delivery of distillery slop at cattle-feeding lot contemplated that lot be supplied with suitable pens equipped with troughs and pipes.

Syl. 4 (VII, 719). Evidence sufficient to establish usage.

Approved in Chicago etc. Ry. Co. v. Lindeman, 143 Fed. 949, where plaintiff's witnesses testify that there was custom of doing act in certain way, and that they followed custom, and defendants' witnesses say they performed same act at same time in different way, custom not shown to be uniform; Penland v. Ingle, 138 N. C. 458, 50 S. E. 851, holding custom of real estate brokers to charge five per cent commission not sufficiently shown.

13 Wall. 367-373, 20 L. 594, HALL v. RAILROAD COS.

Syl. 1 (VII, 719). Insurer's liability secondary to carrier.

Approved in Firemen's Fund Ins. Co. v. Oregon Ry. etc. Co., 45 Or. 62, 76 Pac. 1077, 67 L. R. A. 161, where insurer pays loss under policy in sum less than insured's loss, and takes subrogation assignment for sum paid, insurer and insured may sue, in joint names, wrongdoer causing loss.

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Syl. 2 (VII, 719). Payment of loss by marine insurers—Abandonment.

Approved in The Livingstone, 130 Fed. 748, 65 C. C. A. 610, bill of sale of vessel sunk in collision and which is actual total loss and is abandoned does not vest insurer with right of action against vessel in fault for collision.

13 Wall. 373-379, 20 L. 611, EAST SAGINAW ETC. SALT CO. v. SAGINAW.

Syl. 6 (VII, 724). Bounties are repealable.

Approved in Powers v. Detroit etc. Ry. Co., 201 U. S. 557, 50 L. 865, 26 Sup. Ct. 556, Mich. Laws 1855, p. 305, § 9, providing that railroad shall pay tax based on percentage of capital stock in lieu of other taxes, creates contract between state and railroad; Houghton v. Payne, 194 U. S. 99, 48 L. 891, 24 Sup. Ct. 590, construing Comp. St. 1901, p. 2646, with reference to second-class mail matter.

13 Wall. 379-386, 20 L. 627, SLAUGHTER v. GERSON.

Syl. 1 (VII, 724). What misrepresentation vitiates contract.

Approved in Chamberlayne v. American Law Book Co., 148 Fed. 317, representation to law-writer that he can complete certain treatise within time limit of contract is not basis of action for deceit; Kimber v. Young, 137 Fed. 747, 70 C. C. A. 178, in action for deceit in sale of corporate bonds allegations of false representations by defendant that he knew bonds were good and that they would be paid create no liability; Gardner v. Mann, 36 Ind. App. 698, 76 N. E. 418, where owner of city property exchanged it for land in another state on representation that it was raw prairie land, whereas it was desert, and neither party had seen it, city owner entitled to rescind.

Syl. 3 (VII, 725). Misrepresentation—Means of knowledge available to both.

Approved in Curran v. Smith, 149 Fed. 950, affirming Smith v. Curran, 138 Fed. 157, holding where contracting engineers entered into provisional contract to investigate pipe-line project, and if satisfactory to contract for its construction, and they investigated it for one month and then entered into final contract, they cannot defend breach on ground of misrepresentation; Heck v. Missouri etc. Ry. Co., 147 Fed. 780, one signing release of cause of action for damages on receipt of money, without reading it, cannot avoid release on ground of misrepresentation of contents; Burk v. Johnson, 146 Fed. 215, one purchasing right to use copyrighted plan for establishment of mutual burial associations cannot rescind sale for misrepresentations as to rights under copyright where he had opportunity to ascertain rights; Pittsburg Life etc. Co. v. Northern etc. Ins. Co., 140 Fed. 893, where, in examination of condition of concern which purchaser bought, statement prepared by seller's officers for its own use was used, and after

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sale it was found that there were errors in it, action for deceit does not lie.

Distinguished in Mather v. Barnes, 146 Fed. 1004, where purchasers of coal land who sent experts into field to examine same were deceived by acts of agent of seller, sale set aside; Kell v. Trenchard, 142 Fed. 23, where land and standing timber estimated at not less than thirty-five million feet sold, and buyer's agent deceived by seller's agent as to quantity by false representations as to boundaries, principal was liable for fraud of agent; Davis v. Moore, 46 Or. 155, 79 Pac. 416, where one employed to select land for homestead selected piece which plaintiff could not secure on account of mining claims, he cannot defend on ground that plaintiff saw evidence of mines on ground, where defendant represented they had been abandoned.

13 Wall. 418-432, 20 L. 655, DAVENPORT v. LAMB.

Syl. 4 (VII, 731). Under territorial laws settlers have possessory right.

Approved in Price v. Brockway, 1 Alaska, 236, one who erects cabin on town lot in Alaska and acquires undisputed possession and occupaney thereof, may maintain ejectment against one who ousts him therefrom.

13 Wall. 434-449, 20 L. 659, CLINTON v. ENGLEBRECHT.

Syl. 3 (VII, 733). Selection of juries left to territorial legislature.

Approved in Ex parte Moran, 144 Fed. 604, selection of grand jurors in way not authorized by territorial statute does not entitle prisoner to discharge on habeas corpus; Allen v. Reed, 10 Okl. 111, 60 Pac. 784, holding void election law providing for change in location of county seat; Cullins v. Overton, 7 Okl. 485, 54 Pac. 706, under act of Congress (29 Stat. 113), appellate court may determine cause pending therein on appeal from Greer county court taken prior to March 16, 1896, but not decided till after that date; Territory v. Stroud, 6 Okl. 114, 50 Pac. 267, upholding act providing for prosecution of misdemeanors by information without preliminary examination; Ex parte Hally, 1 Okl. 16, 25 Pac. 515, under Organic Act, § 10, United States commissioner may commit one charged with assault to custody of United States marshal; dissenting opinion in Allen v. Reed, 10 Okl. 130, 152, 63 Pac. 869, 876, majority holding void election law providing for change in location of county seat.

Syl. 7 (VII, 735). Territorial courts not United States courts.

Approved in Cochran v. United States, 147 Fed. 207, on trial in territorial court of offense against United States, questions relating to severance and number of peremptory challenges are determined by territorial laws; Ex parte Moran, 144 Fed. 598, circuit court of appeals may issue habeas corpus to inquire into power of Oklahoma court to imprison one convicted of capital crime; Wallace v. Adams,

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143 Fed. 725, United States courts in Indian territory have equitable jurisdiction to charge title to land evidenced by Dawes Commission certificate of allotment with trust in favor of rightful claimant; Welty v. United States, 14 Okl. 15, 16, 76 Pac. 123, in criminal prosecution in territorial court sitting with powers of federal court, territorial procedure governs; Fuller v. Johnson, 8 Okl. 605, 58 Pac. 747, United States court of Indian territory is not "United States court" within Okl. St. 1890, p. 930, § 2, relating to limitation of actions; Ex parte Murphy, 1 Okl. 290, 29 Pac. 653, bail pending appeal in criminal case on federal side of territorial court is allowed as provided by territorial statute.

13 Wall. 456-465, 20 L. 629, BUTLER v. WATKINS.

Syl. 4 (VII, 739). Requisites to show fraud.

Approved in Rogers v. Virginia-Carolina etc. Co., 149 Fed. 19, upholding sufficiency of complaint in action for fraud in inducing contract for sale of options for purchase of phosphate lands.

Syl. 6 (VII, 739). Corporation liable for agent's fraud.

Approved in Stewart v. Wright, 147 Fed. 328, where bank knew that defendant was engaged in confidence game and represented him as man of credit to victims, and its officers drew drafts for victims, bank liable as party to scheme.

Syl. 7 (VII, 739). Inference of fraudulent motive.

Approved in Exchange Bank v. Moss, 149 Fed. 343, where petition in action for recovery of money obtained by conspiracy between bank and others to swindle strangers, alleged existence of conspiracy for long time, evidence of acts of bank's cashier with respect to similar transactions is admissible; Brooks v. United States, 146 Fed. 231, in trial for mailing certain letters with intent to defraud, other letters from defendant's company relating to company's transactions, admissible to show existence of fraudulent scheme; Olson v. United States, 133 Fed. 854, 67 C. C. A. 21, on indictment for conspiracy to defraud government by causing illegal entry of certain tract by certain person, evidence of inducement of entry by others of other tracts is admissible; Yakima Valley Bank v. McAllister, 37 Wash. 574, 107 Am. St. Rep. 823, 79 Pac. 1122, where, in action on note, defendant alleges indorsement procured by trick, evidence of similar trick played on others is admissible even as against bona fide holder.

13 Wall. 475-479, 20 L. 542, THE ARIADNE.

Syl. 1 (VII, 741). Collision—Duty to have lookout.

Approved in The Cypromene, 135 Fed. 565, holding steamer navigating river at night without lookout liable for collision with ship anchored in customary anchorage; The Sitka, 132 Fed. 864, holding steamer liable for collision with passing vessel where she had no efficient lookout; The Echo, 131 Fed. 631, holding steamer navigating

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river opposite New Orleans liable for collision where she had no lookout other than master.

13 Wall. 506-517, 20 L. 702, FRENCH v. EDWARDS.

Syl. 1 (VII, 744). Statutory requisitions for officers, when directory.

Approved in Western Electric Co. v. North Electric Co., 135 Fed. 82, 67 C. C. A. 553, where, under Rev. St., § 4885, by reason of accumulation of work, patent cannot be prepared within six months after allowance, and it is reallowed and issued on later date, it is not void; Allen v. City of Davenport, 132 Fed. 215, 65 C. C. A. 641, under Iowa 25th Gen. Assem. Acts, c. 7, p. 18, providing that all street improvements shall be made by contract, special assessment cannot be levied unless valid contract made; Montana Ore etc. Co. v. Maher, 32 Mont. 487, 81 Pac. 15, ten days' notice to taxpayer of increase in assessment required by Pol. Code, § 3789, is jurisdictional; Hertzler v. Freeman, 12 N. D. 190, 96 N. W. 285, assessment of realty in name of another than true owner does not render tax void; Frazier v. Prince, 8 Okl. 258, 58 Pac. 752, under Okl. St. 1893, § 5618, where three contiguous lots are listed separately, but valued together, assessment is void; Sweet v. Boyd, 6 Okl. 711, 52 Pac. 943, refusing to enjoin collection of taxes for mere irregularities in tax proceedings which did not affect substantial rights; Sharpe v. Engle, 2 Okl. 628, 39 Pac. 385, taxpayer cannot enjoin collection of taxes because levied few days after time provided by Okl. St. 1893, § 5627; Tefft v. Lewis, 27 R. I. 17, 60 Atl. 246, under Pub. Laws 1903, p. 33, c. 1101, vesting title to property of abolished school districts in towns, and providing for appraisement of property and levy of tax to pay therefor, assessment without appraisal is void; Dickson v. Burckmyer, 67 S. C. 533, 46 S. E. 346, determining validity of tax sale.

Syl. 2 (VII, 746). Tax sale—Sale of smallest portion.

Distinguished in dissenting opinion in Jacobs v. Buckaleu, 4 Ariz. 357, 42 Pac. 621, majority holding under Rev. St., par. 2694, requiring collector to designate what portion less than whole he will sell, inquiry "who will take lowest quantity of said block and pay taxes and costs due" is not sufficient.

Syl. 3 (VII, 746). Presumptions as to regularity of official acts.

Approved in United States v. Cornell Steamboat Co., 202 U. S. 192, 50 L. 991, 26 Sup. Ct. 648, upholding liability of government for salvage on duties collected by it on cargo afterward saved from fire while in possession of customs officers; Wabash R. Co. v. De Tar, 141 Fed. 934, applying rule to instructions as to presumption of exercise of due care by one approaching railroad crossing.

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13 Wall. 517-523, 20 L. 543, MILWAUKEE ETC. RAILROAD CO. v. SOUTTER.

Syl. 4 (VII, 748). Recovery of money paid under mistake of law.

Approved in German Sav. & L. Soc. v. Tull, 136 Fed. 5, 69 C. C. A. 1, tenant in common who purchases entire interest through foreclosure not bona fide purchaser where he had knowledge of fraudulent probate proceedings; dissenting opinion in Thomas v. Provident Life etc. Co., 138 Fed. 371, majority holding where property charged with legacy was sold, and proceeds paid to legatee, neither she nor judgment creditor of residuary legatees can object to mortgage of estate's lands executed without authority in will.

13 Wall. 526-531, 20 L. 631, COMMONWEALTH v. BOUTWELL.

Syl. 1 (VII, 749). Mandamus—Payment of claim after time.

Approved in Bosworth v. Shuck, 118 Ky. 462, 81 S. W. 241, denying mandamus to compel treasurer to pay warrant for auditor's clerk issued pursuant to judgment, where appropriation was exhausted; Wilson v. Cox, 73 S. C. 400, 53 S. E. 613, denying mandamus to compel county dispenser to open dispensary where election had decided against dispensary.

13 Wall. 531-568, 20 L. 491, STOCKWELL v. UNITED STATES.

Syl. 2 (VII, 750). When debt lies.

Approved in United States v. Alcorn, 145 Fed. 1001, in action on proposal bond given by bidder for mail contract under Comp. St. 1901, p. 2695, actual damages cannot be inquired into.

Syl. 4 (VII, 750). Knowledge of one partner as knowledge of all.

Approved in In re Hardie, 143 Fed. 609, materially false statement by one partner in course of firm's business for purpose of obtaining credit for firm bars other partner from right to discharge in bankruptcy.

13 Wall. 568-580, 20 L. 707, TWENTY PER CENT CASES.

(VII, 752.) Miscellaneous. Cited in State v. Loechner, 65 Neb. 818, 91 N. W. 875, 59 L. R. A. 915, member of board of education of school district in city is ministerial officer within Cr. Code, § 180, punishing malfeasance in office.

13 Wall. 603, 604, 20 L. 708, HOME ETC. INS. CO. v. BARTON.

Syl. 1 (VII, 753). Discretion to grant or refuse new trial.

Approved in Newport News etc. Electric Co. v. Yount, 136 Fed. 590, 69 C. C. A. 363, following rule.

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13 Wall. 608-616, 20 L. 709, PAIGE v. BANKS.

Syl. 2 (VII, 754). Assignment of copyright forever—Effect of statutory limit.

Approved in New York Life Ins. Co. v. Smith, 139 Ala. 309, 35 So. 1006, note for premium on policy stipulating for its deduction from policy if it becomes claim is not indebtedness on account of policy within provision for extended insurance for face of policy on payment of debt within thirty days of lapse of premium.

13 Wall. 616-623, 20 L. 501, PHOENIX MUT. LIFE INS. CO. v. BAILEY.

Syl. 3 (VII, 755). Equitable relief—Adequate law remedy.

Approved in United States v. Bitter Root etc. Co., 133 Fed. 278, 66 C. C. A. 652, denying equitable jurisdiction over suit by United States against number of corporations for joint trespass on public lands and unlawful cutting of timber therefrom; Gulf Red Cedar Co. v. Crenshaw, 138 Ala. 141, 35 So. 51, upholding jurisdiction over suit by tenants in common against cotenants for accounting of timber taken, discovery and injunction against future waste.

Syl. 5 (VII, 757). Where law gives complete relief no equity.

Approved in Ames Realty Co. v. Big Indian etc. Min. Co., 146 Fed. 176, in federal equity suit to protect water rights in stream against other separate appropriators, all of whom are citizens of different states from complainant, court may entertain cross-bill setting up priority, irrespective of citizenship; General Elec. Co. v. Westinghouse Elec. & Mfg. Co., 144 Fed. 466, where contract for manufacture of goods provided for liquidated damages at half of sale price in case of breach, violation thereof not enjoined; American Lighting Co. v. Public Service Corp. 134 Fed. 131, refusing to punish as contempt the disregard of restraining order issued in case where adequate remedy at law existed; American Alkali Co. v. Salom, 131 Fed. 50, 65 C. C. A. 284, subscriber to corporate stock may plead rescission of sale for fraud as defense to action for assessment on subscription.

Syl. 6 (VII, 757). Defense at law to legal demand bars equity.

Approved in Scottish Union etc. Ins. Co. v. Bowland, 196 U. S. 633, 49 L. 628, 25 Sup. Ct. 345, refusing to enjoin prosecution of suits against foreign corporation for personal property taxes on ground that corporation is not personally liable therefor; Des Moines Life Ins. Co. v. Seifert, 210 Ill. 159, 71 N. E. 350, refusing to cancel insurance policy because of false statements by insured in application; Seymour Water Co. v. Seymour, 163 Fed. 127, 70 N. E. 516, refusing to cancel contract between city and water company granting latter exclusive right to furnish water at exorbitant rate; Security Sav. Bank v. Carroll, 128 Iowa, 233, 103 N. W. 380, receipt of notice from treasurer of intent to assess property alleged to have been omitted is no ground for injunction prior to time fixed for hearing; Lynch v. United States,

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13 Okl. 145, 73 Pac. 1097, refusing at suit of government, to cancel patent obtained by bribery and perjury of entryman who has sold to bona fide purchaser; Johnson v. Swanke, 128 Wis. 73, 107 N. W. 482, 5 L. R. A. (N. S.) 1048, maker of non-negotiable note procured by fraud is not entitled to its cancellation or to injunction against its transfer.

13 Wall. 664-672, 20 L. 632, EX PARTE RUSSELL.

Syl. 2 (VII, 765). New trial after receipt of appellate mandate.

Approved in Chambliss v. Hass, 125 Iowa, 488, 101 N. W. 155, 68 L. R. A. 126, where defendant appealed and judgment was affirmed, and it was paid on execution, defendant's motion for new trial on ground of new evidence made within statutory period.

13 Wall. 679-738, 20 L. 666, WATSON v. JONES.

Syl. 2 (VII, 767). Abatement—Identity of other suit pending.

Approved in In re Chandler, 135 Fed. 893, bankruptcy proceedings are still pending in district court notwithstanding dismissal of petition to revoke discharge so as to authorize order restraining bankrupt's arrest while cause stands on review in circuit court of appeals; Loewe v. Lawlor, 130 Fed. 634, pendency of state suit is not ground for abatement of federal suit to recover treble damages under Anti-trust Act, § 7; Mares v. Dillon, 30 Mont. 138, 75 Pac. 967, pendency of action in support of one mining claim not bar to suit in support of another claim.

Syl. 3 (VII, 767). Interfering with possession of state court.

Approved in Cobe v. Ricketts, 111 Mo. App. 110, 85 S. W. 132, where, after suit brought in federal court to dissolve loan society, state court attempted to transfer its jurisdiction previously attached in similar suit to federal court, which assumed jurisdiction, decree of sale of assets not collaterally assailable in suit on society's note.

Syl. 10 (VII, 771). Religious societies—Determination of questions of discipline.

Approved in Shaeffer v. Klee, 100 Md. 271, 59 Atl. 852, members of religious society cannot sue to restrain trustees from changing language of service; First Presbyterian Church v. Myers, 5 Okl. 820, 50 Pac. 74, 38 L. R. A. 687, determining whether "call" made by Presbyterian church is proposition for a contract effective only on concurrency of presbytery.

Explained in Hendryx v. People's United Church, 42 Wash. 340, 84 Pac. 1125, where members of church are expelled in pursuance of fraudulent scheme to divert property from its original purpose, expelled members may sue to protect church property.

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Syl. 11 (VII, 773). Religious societies—judicial review of decisions.

Approved in Morris St. Baptist Church v. Dart, 67 S. C. 341, 100 Am. St. Rep. 727, 45 S. E. 754, majority of members of Baptist church may, at regular meeting properly called, dismiss pastor without notice or trial on charges; Christian Church v. Church of Christ, 219 Ill. 511, 76 N. E. 705, arguendo.

(VII, 766.) Miscellaneous. Cited in Sumner v. Milford, 214 Ill. 394, 73 N. E. 744, explaining meaning of word "jurisdiction."

XIV WALLACE.

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14 Wall. 44-69, 20 L. 815, HENDERSON'S DISTILLED SPIRITS.

Syl. 2 (VII, 778). Forfeitures—Subsequent payment no defense.

Approved in United States v. One Dark Bay Horse, 130 Fed. 241, where claimant of property had owned it for over five years without suspicion of its illegal importation, proceeding for forfeiture is barred; Daniels v. Homer, 139 N. C. 230, 51 S. E. 996, 3 L. R. A. (N. S.) 997, upholding Acts Gen. Assem. 1905, c. 292, § 9, providing for seizure and sale of property used in illegal fishing.

(VII, 778.) Miscellaneous. Cited in Leigh v. Green, 193 U. S. 88, 101 Am. St. Rep. 606, 48 L. 627, 24 Sup. Ct. 390, holding of lien on realty not denied due process by statute providing for service by publication of notice of pendency in rem to enforce lien of purchaser at tax sale.

14 Wall. 69-84, 20 L. 762, CHRISTMAS v. RUSSELL.

Syl. 4 (VII, 780). Requisites of equitable assignment.

Approved in Weiss v. Gullett, 18 Colo. App. 128, 70 Pac. 444, contract between mine owners and attorneys to pay certain sum of purchase money of mine when sold gives no right of action by attorneys against purchaser; Reviere v. Chambliss, 120 Ga. 716, 48 S. E. 123, unaccepted check is not assignment of money to credit of drawer.

Syl. 6 (VII, 781). Assignment—Agreement to pay out of fund.

Approved in Cogan v. Conover Mfg. Co., 69 N. J. Eq. 364, 60 Atl. 411, reaffirming rule; Long v. Farmers' State Bank, 147 Fed. 363, where debtor agreed to carry insurance on stock to protect bank's claim, assigning insurance to bank as collateral, there was no assignment of policies in praesenti; In re Cramond, 145 Fed. 977, where paving contractor assigned right to moneys due to bank to obtain advances to complete work, bank acquired equitable lien superior

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to priority right of payment given by Bankr. Act, § 64 to laborers; Johnston v. Huff, 133 Fed. 706, 66 C. C. A. 534, where one contracting to board, track gang agreed with supply firm for credit, giving it order on railroad for sums due him, which was not to be presented unless he fell short in payments, and order not presented till one day prior to petition in bankruptcy, it was preference.

Syl. 7 (VII, 782). Assignment—Order to pay out of specified fund.

Approved in Gillette v. Murphy, 7 Okl. 105, 54 Pac. 417, order given by ex-sheriff to creditors on county for warrants due from it to such sheriff for fees is equitable assignment of account.

14 Wall. 87-98, 20 L. 832, TRADERS' BANK v. CAMPBELL.

Syl. 4 (VII, 784). Bankruptcy—Preference to bank setoff of deposits.

Approved in Tomlinson v. Bank of Lexington, 145 Fed. 826, where concern had agreement with bank as to overdrafts, deposits applied to such overdrafts not preferences which must be surrendered before bank could prove notes against bankrupt's estate.

14 Wall. 98-109, 20 L. 804, THE THAMES.

Syl. 3 (VII, 785). Duty of carrier to hold goods for consignees.

Approved in Arkansas etc. Ry. Co. v. German Nat. Bank, 77 Ark. 487, 92 S. W. 524, following rule; dissenting opinion in Clegg v. Southern Ry. Co., 135 N. C. 156, 47 S. E. 670, majority holding where railroad refused to deliver fruit to owner on his refusal to pay freight in excess of that due, and before discovery of error fruit frozen, fact that at time of demand bill of lading had not been delivered by consignee is no defense.

Syl. 5 (VII, 785). Bill of lading—Title to goods.

Approved in The Nimrod, 141 Fed. 217, where owners of tug contracted for repairs in name of company under which tug operated, but there was no corporation of that name, owners as individual could sue for breach of contract; General Electric Co. v. Southern Ry., 72 S. C. 254, 110 Am. St. Rep. 603, 51 S. E. 696, where freight shipped under bill of lading with draft attached, bill of lading running to order of shipper, and to notify third party, carrier could not deliver without bill of lading.

14 Wall. 116-120, 20 L. 787, THE BRIDGEPORT.

Syl. 1 (VII, 786). Collision—Deviation from usual course.

Approved in The Degama, 150 Fed. 324, moving vessel colliding with moored vessel cannot be exonerated on ground that tugs controlled movements unless such defense is pleaded and proved.

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14 Wall. 120-151, 20 L. 765, ARMSTRONG v. MORRILL.

(VII, 787.) Miscellaneous. Cited in King v. Hatfield, 130 Fed. 578, arguendo.

14 Wall. 170-189, 20 L. 822, THE SCOTIA.

Syl. 2 (VII, 790). Collision—Precautions where danger not apprehended.

Approved in The Kaiserin Maria Theresa, 149 Fed. 99, steamer is not required to maintain speed so low as to enable her to avoid collision without other vessel navigating without proper lights.

Syl. 3 (VII, 790). Law governing whether act tortious.

Approved in In re Clyde S. S. Co., 134 Fed. 99, upholding admiralty jurisdiction over suit for death due to collision on high seas, where recovery for wrongful death is given by statutes of state in which both vessels belonged.

Syl. 6 (VII, 791). Rules of navigation part of maritime law.

See 113 Am. St. Rep. 872, note.

14 Wall. 199-204, 20 L. 873, THE MERRIMAC.

Syl. 1 (VII, 792). Liability for negligent sailing where pilot aboard.

Approved in The Robert Rickmers, 131 Fed. 642, vessel liable for damage to another by drifting though anchorage chosen by master of her tug.

14 Wall. 204-216, 20 L. 881, THE MABEY AND COOPER.

Syl. 2 (VII, 793). Collision—Inevitable accident defined.

Approved in New York etc. S. S. Co. v. New York etc. Ry. Co., 143 Fed. 993, defense of inevitable accident not made out where collision between tug and steamer caused by floating ice which was not seen because of absence of proper lookout on tug.

14 Wall. 244-252, 20 L. 797. GIBSON v. WARDEN.

Syl. 3 (VII, 794). Assignees stand in place of bankrupt.

Approved in Smith v. Au Gres Twp. 150 Fed. 264, witness may testify after death of bankrupt to admissions made by bankrupt concerning his estate while he was yet owner thereof; Tatman v. Humphrey, 184 Mass. 362, 100 Am. St. Rep. 562, 68 N. E 845, 63 L. R. A. 738, in case of preference by way of unrecorded chattel mortgage, transfer dates from acquisition of possession under mortgage.

Syl. 4 (VII, 795). Bankruptcy—Transfers in fraud of creditors.

Approved in In re Pease, 129 Fed. 450, where trust company through its attorney, who also represented creditors of merchant, loaned money

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on chattel mortgage on his stock, with which he paid attorney's clients, and next day company sold stock under mortgage, mortgage was void under Bankr. Act, § 67e.

14 Wall. 252-257, 20 L. 887, HOOK v. PAYNE.

Syl. 1 (VII, 796). Administrators—Parties—Suit to recover distributive share.

Approved in O'Callaghan v. O'Brien, 199 U. S. 101, 50 L. 107, 25 Sup. Ct. 727, denying federal jurisdiction on ground of diversity of citizenship, over bill seeking declaration of nonexistence of will and nullity of its state probate, where state proceeding to contest will is only ancillary to original proceeding.

14 Wall. 270-279, 20 L. 828, THE CAYUGA.

Syl. 4 (VII, 799). Demurrage for injuries caused by collision.

Approved in The Mary N. Bourke, 145 Fed. 911, allowing owner of vessel to set off, against cost of repairs, demurrage because of unnecessary delay in their completion.

14 Wall. 282-297, 20 L. 809, CITY OF LEXINGTON v. BUTLER.

Syl. 3 (VII, 800). Municipal negotiable securities—Bona fide purchasers.

Approved in In re Troy & Cohoes Shirt Co., 136 Fed. 433, where officers of corporation drew note payable to corporation's order, which they indorsed in name of corporation and individually and delivered it to another officer for use of firm of which all were members, and it was indorsed in firm name, knowledge of discounter that officers were members of firm not notice of true character of notes.

14 Wall. 297-308, 20 L. 891, BIGLER v. WALLER.

Syl. 1 (VII, 803). Deed of trust requiring notice of sale.

Approved in Chace v. Morse, 189 Mass. 561, 76 N. E. 144, fact that notice of sale under power in mortgage, and sale itself, included land not mortgaged, renders sale voidable only; Moore v. Dick, 187 Mass. 211, 72 N. E. 968, applying rule where deed of trust provided for notice of sale in certain paper and notice given in another paper.

14 Wall. 314-335, 20 L. 852, FRENCH v. SHOEMAKER.

Syl. 2 (VII, 804). Duress to avoid contract.

Approved in First Nat. Bank v. Sargent, 65 Neb. 601, 91 N. W. 597, 59 L. R. A. 296, where one gave bank deed to land as security for debt, and debtor being broke procured purchaser at good price, but bank refused to consent to sale, unless big bonus paid it, bonus procured under duress.

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Syl. 3 (VII, 805). Setting aside contract—Financial distress.

Approved in Burnes v. Burnes, 132 Fed. 493, refusing to set aside agreement for division of stock in corporation formed out of business of decedent where decedent's partner threatened to administer estate as survivor unless corporation formed.

14 Wall. 336-345, 20 L. 813, THE LAURA.

Syl. 1 (VII, 805). Abandoned vessel is derelict.

Approved in The Myrtle Tunnel, 146 Fed. 330, where vessel stranded and contract made for floating her, but effort unsuccessful and she was abandoned by crew, and later she was moved off by high wind and found drifting by tug, and towed to port, tug entitled to half proceeds for salving her as derelict.

14 Wall. 375-383, 20 L. 894, INSURANCE COS. v. WEIDES.

Syl. 1 (VII, 806). Insurance—Copy of original burned inventory admissible.

Approved in Grunberg v. United States, 145 Fed. 96, 97, permitting use of entries in ledger showing gross amount of invoices of goods sold and payments made thereon, to refresh memory of member of firm, where ledger posted at end of month; United States v. Ninety-nine Diamonds, 139 Fed. 968, 2 L. R. A. (N. S.) 185, construing Comp. St. 1901, p. 1895; relating to false statements of entry of merchandise; St. Louis etc. Ry. Co. v. White S. M. Co., 78 Ark. 5, 93 S. W. 60, where, on issue as to whether telegram sent, operator's testimony that he did not himself send message, but that service notation marks on original made by him and that from such memorandum he knew at time of making it that message was sent, is admissible; Meyers v. McAllister, 94 Minn. 512, 103 N. W. 565, upholding admission of list of personalty involving numerous items, shown to be correct by testimony of party who made it, without direct proof that he could testify to details independently of list; Manning v. School District No. 6, 124 Wis. 99, 102 N. W. 361, permitting witness to refresh memory from memorandum made by him at time of occurrence and remembered by him to have been then known to be correct, though he has no present recollection of facts, and admitting memorandum in evidence.

14 Wall. 383-402, 20 L. 840, BANK OF BETHEL v. PAHQUIOQUE BANK.

Syl. 3 (VII, 809). Status of national bank in hands of receiver.

Approved in Gerard v. Duncan, 84 Miss. 735, 36 So. 1035, 66 L. R. A. 461, notes and solvent credits of insolvent state bank passing to assignee by general assignment before February 1st in any year are taxable in hands of assignee; Fish v. Olin, 76 Vt. 125, 56 Atl. 533, receiver of national bank may sue at law in own name in

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state courts; Muir v. Citizens' Nat. Bank, 39 Wash. 58, 80 Pac. 1007, where national bank went into voluntary liquidation, it was not thereafter required to register subsequent transfer of its stock and to issue new stock to transferee.

Syl. 4 (VII, 809). Appointment of receiver does not dissolve bank.

Approved in Cogswell v. Second National Bank, 76 Conn. 259, 56 Atl. 577, appointment of temporary receiver, though erroneous, under U. S. Rev. St., § 5242, is not ground for reversal, where appointment made to fill vacancy caused by death.

14 Wall. 402-405, 20 L. 857, O'DOWD v. RUSSELL.

Syl. 3 (VII, 811). Erroneous date on writ of error not fatal.

Approved in In re McCall, 145 Fed. 903, applying rule where order overruling application for rehearing of order confirming bankrupt's composition was entered on journal for October 10th, which contained filing indorsement of same date, and judge's direction to enter order was dated October 16th.

14 Wall. 406-418, 20 L. 774, THE STEAMER WEBB.

Syl. 2 (VII, 812). Care required of towing tug.

Approved in The Britannia, 148 Fed. 497, holding tug towing scows at fault where its only hawser parted thrice and scows lost; The Oceanica, 144 Fed. 303, where steamer towing barge broke propeller and cast barge loose, so that it drifted against pier, barge not in fault for not dropping anchor when cast adrift; The W. G. Mason, 142 Fed. 915, where steamer towed by two tugs promptly obeyed signals of leader, but stranded against channel, burden of disproving negligence is on tugs; Burr v. Knickerbocker etc. Co., 132 Fed. 249, 65 C. C. A. 554, where vessel being towed from dock up channel in calm weather stranded after going few lengths, negligence of tug presumed; The W. G. Mason, 131 Fed. 636, applying rule where steamer in tow of tugs promptly obeyed signals of leader, but stranded against one side of channel; Williams v. Alaska Commercial Co., 2 Alaska 64, where tow-line broke outside of three-mile limit and tow left to its fate, and wrecked on shore, where decedent's death happened, cause of action accrued in Alaska.

14 Wall. 419-433, 20 L. 748, SMITH v. MASON.

Syl. 4 (VII, 814). Bankruptcy—Proceedings to recover property conveyed.

Approved in First Nat. Bank v. Chicago Title etc. Co., 198 U. S. 289, 49 L. 1054, 25 Sup. Ct. 693, no appeal lies from decree of bankruptcy court in proceeding begun by receiver's petition for directions respecting sale by which question of his possession decided, sale decreed and rights of adverse claimants determined.

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14 Wall. 434-441, 20 L. 858, MOWRY v. WHITNEY.

Syl. 1 (VII, 815). Suit to annul patent by whom brought.

Approved in Allen v. Consolidated Fruit Jar Co., 145 Fed. 949, denying jurisdiction over suit for accounting for profits, damages, or royalties based on contract granting license under patent, or for cancellation of patent; Eastern etc. Bag Co. v. Continental etc. Bag Co., 142 Fed. 511, alleged infringer cannot collaterally attack patent on ground that patentee's solicitor contributed substantial part of invention and embodied it in application after patentee had made oath to same; Calculagraph Co. v. Wilson, 132 Fed. 21, validity of patent regular on its face cannot be collaterally attacked on ground that final fee was not paid within six months required by statute.

Syl. 2 (VII, 816). Equity jurisdiction to try conflicting claims on patents.

Approved in Boston etc. Power Co. v. Eureka Patents Co., 139 Fed. 31, where identity of patent claims not shown, court cannot declare later patent invalid for want of patentability.

14 Wall. 442-452, 20 L. 867, SCHUYLKILL ETC. IMPROVEMENT & RY. CO. v. MUNSON.

Syl. 2 (VII, 817). Trial—Prima facie case.

Approved in Swift v. Johnson, 138 Fed. 875, where father willfully abandoned family, evidence that prior to death, son said that if father were in need he would give him something, does not warrant recovery of more than nominal damages for wrongful death of son; Minahan v. Grand Trunk etc. Ry. Co., 138 Fed. 45, 70 C. C. A. 463, holding evidence in action for injuries to passenger by derailment of car as it passed over defective switch presented question for jury; Chicago etc. Ry. Co. v. Andrews, 130 Fed. 74, 64 C. C. A. 399, applying rule in action for injuries at railroad crossing where plaintiff's evidence showed culpable negligence; Gunn v. Union R. R. Co., 27 R. I. 327, 62 Atl. 121, upholding Gen. Laws 1896, c. 251, § 11, authorizing supreme court to direct judgment without further trial by jury.

Syl. 4 (VII, 819). Proof of loss of first survey to admit second.

Approved in Brown v. Harkins, 131 Fed. 66, 65 C. C. A. 301, refusing secondary evidence of contents of record-book on proof that it had been taken to revenue office from collector's office, and that search had been made in revenue office for it.

14 Wall. 484-491, 20 L. 722, DIRST v. MORRIS.

Syl. 2 (VII, 822). Review of evidence as to weight or sufficiency.

Approved in Coulter v. B. F. Thompson Lumber Co., 142 Fed. 708, court cannot instruct as to which class of evidence is preferred;

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J. W. Bishop Co. v. Shelhorse, 141 Fed. 618, applying principle in action for wrongful death; Streeter v. Sanitary Dist. of Chicago, 133 Fed. 126, 128, 129, 66 C. C. A. 190, in case tried to court where there were no special findings nor stipulation of facts, ruling in request that as matter of law plaintiff was entitled to recover amount claimed is not reviewable; Paul v. Delaware etc. R. Co., 130 Fed. 955, where general verdict is rendered only, such rulings in progress of trial are reviewable as are presented by bill of exceptions, or as may arise on pleadings.

14 Wall. 491-493, 20 L. 723, COLLINS v. RIGGS.

Syl. 1 (VII, 823). Redemption where sale for less than debt.

Approved in Dougherty v. Kubat, 67 Neb. 274, 93 N. W. 319, mortgagee may insist upon tenant in common redeeming only to extent of his interest.

14 Wall. 493-504, 20 L. 726, UNITED STATES v. POWELL.

Syl. 1 (VII, 823). Bond conditioned to comply with distillery laws.

Approved in National Surety Co. v. United States, 129 Fed. 72, 63 C. C. A. 512, letter carrier's bond for performance of duties as carrier imposed by postal laws or regulations of department binds surety for discharge of duty of collecting letters to be registered imposed by order of department during term of bond.

14 Wall. 511-531, 20 L. 731, GORHAM CO. v. WHITE.

Syl. 1 (VII, 824). Patent for designs.

Approved in West Disinfecting Co. v. Frank, 146 Fed. 389, upholding Taussig patent No. 33,633, for design for casing for disinfecting apparatus.

Syl. 2 (VII, 825). Design patents—What protected.

Approved in General Gaslight Co. v. Matchless Mfg. Co., 129 Fed. 138, upholding Humphrey design patent No. 35,481, for cluster gas lamp.

Syl. 3 (VII, 825). Patents—When designs identical.

Approved in Baker v. Puritan Pure Food Co., 139 Fed. 683, holding label used as trademark infringed; Williams Calk Co. v. Neverslip Mfg. Co., 136 Fed. 215, 217, holding void Williams design patent No. 29,793, for horseshoe calk, and not infringed.

14 Wall. 531-535, 20 L. 738, MORGAN v. UNITED STATES.

Syl. 1 (VII, 826). Relief for government official's tort.

Cited in Christie-Street Com. Co. v. United States, 129 Fed. 507, arguendo.

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14 Wall. 579-606, 20 L. 779, THE DELAWARE.

Syl. 5 (VII, 830). Carriers not liable where goods not delivered.

Approved in Guffey v. Alaska etc. S. S. Co., 130 Fed. 274, 64 C. C. A. 517, where, at time of delivery of goods on wharf under bill of lading providing for shipment on certain vessel then at port, owner knew ship was at sea, and goods never delivered to ship's officers, vessel not subject to maritime lien for breach of contract. See 105 Am. St. Rep. 351, note.

Syl. 6 (VII, 830). Evidence of usage—Mercantile contracts.

Approved in Lillard v. Kentucky Dist. etc. Co., 134 Fed. 174, 182, 67 C. C. A. 74, admitting evidence of custom to show that contract for delivery of distillery slop at distiller's cattle-feeding lot contemplated that lot be supplied with pens, troughs and pipes; Portland etc. Co. v. British etc. Ins. Co., 130 Fed. 863, 65 C. C. A. 344, refusing evidence of custom of doing business where bill of lading is unambiguous.

Syl. 7 (VII, 831). Parol evidence inadmissible to vary writing.

Approved in Connecticut Fire Ins. Co. v. Buchanan, 141 Fed. 889, applying rule to conditions in insurance policy relating to use and occupancy of building; Ronan v. 155,453 Feet of Lumber, 131 Fed. 348, 349, memorandum delivered by carrier to master of barge after lumber loaded thereon, apparently to be signed by consignee as receipt, and which contained incomplete provisions as to demurrage, but was unsigned, does not exclude evidence of parol agreement with respect thereto.

14 Wall. 607-613, 20 L. 756, LEARY v. UNITED STATES.

Syl. 1 (VII, 831). Charter-party when lease of vessel.

Approved in Golcar S. S. Co. v. Tweedie Trading Co., 146 Fed. 569, charter of vessel at monthly hire for vessel and crew, captain appointed by owners to be under charterer's orders, is demise of ship; Grimberg v. Columbia Packers' Assn., 47 Or. 264, 265, 83 Pac. 196, 197, construing charter-party giving charterer sole use of vessel except master's cabin, and providing that no goods shall be laden except for charterer, is not a demise.

14 Wall. 613-620, 20 L. 745, ERSKINE v. HOHNBACK.

Syl. 2 (VII, 833). Process—Ministerial officer's liability.

Approved in Rush v. Buckley, 100 Me. 329, 61 Atl. 777, 70 L. R. A. 464, holding magistrate issuing warrant and trying case and officer serving warrant not liable for false imprisonment though ordinance violated by plaintiff was void.

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14 Wall. 620-653, 20 L. 860, MOWRY v. WHITNEY.

Syl. 2 (VII, 834). Process patent.

Approved in Johnson v. Foos Mfg. Co., 141 Fed. 84, Johnson patent No. 506,268, for process and apparatus for separating cotton-seed and hulls from fiber is valid as to process claim, but void as to mechanical claim.

Syl. 2 (VII, 834). Patents—Construction of specifications.

Distinguished in Universal Brush Co. v. Sonn, 146 Fed. 520, Morrison patent No. 717,014, claim 1 for method of making brushes, is infringed by method of Sonn patent No. 791,510.

Syl. 3 (VII, 834). Damages—Profits of infringer of improvement.

Approved in Brown v. Lanyon, 148 Fed. 839, action cannot be maintained for sole purpose of recovering profits which infringer of patent has made; New York Bank Note Co. v. Hamilton Bank Note Co., 180 N. Y. 296, 73 N. E. 53, where press manufacturer having agreement not to attach certain device to presses already sold, did so sell, buyer liable for difference between profits made from use of device and those made without it.

14 Wall. 653-661, 20 L. 896, THE KEY CITY.

Syl. 3 (VII, 838). Consolidation of corporations—Purchaser without notice.

See 103 Am. St. Rep. 557, note.

14 Wall. 661-670, 20 L. 757, DELMAS v. MERCHANTS' MUTUAL INSURANCE CO.,

Syl. 2 (VII, 839). State statute—Contracts—Violation of federal constitution.

See 97 Am. St. Rep. 720, note.

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XV WALLACE.

15 Wall. 1-3, 21 L. 113, PORTLAND CO. v. UNITED STATES.

Syl. 1 (VII, 842). Appeal dismissed where brief not in form.

Approved in Fitch v. Richardson, 147 Fed. 196, following rule.

15 Wall. 3-7, 21 L. 118, DUBUQUE ETC. R. R. CO. v. RICHMOND.

Syl. 1 (VII, 842). Record showing federal question.

Approved in Nutt v. Knut, 200 U. S. 19, 50 L. 352, 26 Sup. Ct. 216, following rule.

15 Wall. 9-28, 21 L. 73, DEXTER v. HALL.

Syl. 3 (VII, 843). Lunatic's power of attorney is void.

Approved in White v. Martin, 2 Alaska, 502, where residence of Fairbanks, who owned property there, became insane and wandered away, there is no presumption of intent to abandon possessory claims on public lands; Weber v. Della Mountain Min. Co., 11 Idaho, 275, 81 Pac. 934, applying principle where part of stock of controlling member of corporation was obtained from lunatic.

Denied in Wolcott v. Connecticut etc. Ins. Co., 137 Mich. 313, 100 N. W. 571, assignment of contract to purchase land by insane person is voidable only.

15 Wall. 36-51, 21 L. 107, SMOOT'S CASE.

Syl. 4 (VII, 844.) Refusal to perform contract warranting termination.

Approved in McBath v. Jones Cotton Co., 149 Fed. 386, where contract called for delivery of goods on or before certain date, and prior to that date part of shipment refused as not up to contract, purchaser could not refuse further offers made prior to date called for in contract; Wells v. Hartford Manilla Co., 76 Conn. 34, 55 Atl. 601, where contract provided for certain amount of pulp before certain time, as ordered, and for some time no orders given, and later purchaser telegraphed that no shipments be made, there was no breach warranting seller's rescission and suing for damages; Swiger v. Hayman, 56 W. Va. 126, 107 Am. St. Rep. 901, 48 S. E. 840, applying rule where renunciation of contract was retracted before other party had acted on it; Barker etc. Lumber Co. v. Edward Hines Lumber Co., 137 Fed. 309, arguendo.

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15 Wall 51-57, 21 L. 41, KEARNEY v. DENN.

Syl. 2 (VII, 846). Conclusiveness of judgment of illegitimacy.

Approved in Sorensen v. Sorensen, 68 Neb. 496, 98 N. W. 839, decree on appointment of administrator that mother was not decedent's wife is not conclusive on petition for distribution, where petitioner was not party in former proceedings.

15 Wall. 63-67, 21 L. 45, GRAY v. DARLINGTON.

Syl. 1 (VII, 847). Advance in value as gain or profit.

Approved in Mercer v. Buchanan, 132 Fed. 508, where owner of stock in manufacturing corporation conveyed stock in trust to pay net income to grantor for life, and then to daughter for life, and after grantor's death company sold plant for fifty per cent cash, and stock in purchasing company equal to six times its capital stock, which was distributed as dividends, dividend was not net income.

15 Wall. 75-77, 21 L. 63, ERSKINE v. VAN ARSDALE.

Syl. 3 (VII, 849). Interest on illegal tax collected.

Approved in Herold v. Shanley, 146 Fed. 24, affirming 141 Fed. 430, following rule.

15 Wall. 77-94, 21 L. 82, THE YOSEMITE VALLEY CASE (HUTCHINGS v. LOW).

Syl. 1 (VII, 850). Vested rights of settler on public lands.

Approved in Oregon etc. R. R. Co. v. Quigley, 10 Idaho, 781, 80 Pac. 403, 404, construing 17 Stat. 612, granting railroad right of way and requiring filing of map of definite location; Graham v. Great Falls etc. Co., 30 Mont. 402, 76 Pac. 811, 812, preferential right given successful claimant under Comp. St. 1901, p. 1392, was not vested right, and his privilege was cut off by 26 Stat. 1098; McDonald v. Union P. Ry. Co., 70 Neb. 350, 97 N. W. 441, state courts cannot compel conveyance of lands subject to homestead entry, to one who has been denied privilege of making such entry by land officials.

Syl. 2 (VII, 851). Settler acquires vested right, when.

Approved in Russian-American etc. Co. v. United States, 199 U. S. 578, 50 L. 316, 26 Sup. Ct. 157, all rights previously acquired under Comp. St. 1901, pp. 1467, 1468, by settlement and survey of public lands in Alaska, were terminated by President's proclamation reserving land in question for fish culture station; Wallace v. Adams, 143 Fed. 724, upholding 32 Stat. 641, whereby citizenship court created and empowered to review final judgments of United States courts; United States v. Oregon etc. R. Co., 133 Fed. 955, railroad grant exempting land granted, reserved or pre-empted, excluded lands upon which pre-emption filed and accepted by land office though lands not paid for; Graham v. Great Falls etc. Co., 30 Mont. 400, 76 Pac. 810, preferential right given successful claimant under Comp. St. 1901,

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p. 1392, was cut off by 26 Stat. 1098; Tegarden v. Le Marchel, 129 Fed. 490, arguendo.

Distinguished in Reservation Bank v. Holst, 17 S. Dak. 246, 95 N. W. 933, 70 L. R. A. 799, where application for homestead was returned unacted upon and applicant sowed part of land and mortgaged crop, and another made homestead thereon and received receiver's certificate and former started contest, latter acquired title to crop.

Syl. 5 (VII, 853). Officer's neglect no bar to individual's recovery.

Approved in Smith v. Bonifer, 132 Fed. 891, where selection of lands for allotment made by Indian, act of allotment commissioners in wrongfully allotting them to another does not cut off heirs of person entitled.

15 Wall. 94-105, 21 L. 64, CHESAPEAKE ETC. CANAL CO. v. HILL.

Syl. 2 (VII, 853). Contracts—Consideration of surrounding circumstances.

Approved in United States v. Utah etc. Stage Co., 199 U. S. 423, 50 L. 255, 26 Sup. Ct. 69, increase in service required on mail route as result of establishment of new distributing station amounting to more than three hundred thousand miles of additional transfer service cannot be acquired without additional compensation; American Bonding Co. v. Pueblo Inv. Co., 150 Fed. 27, construing lease and bond; United States etc. Co. v. Board of Commrs., 145 Fed. 148, construing bond to indemnify county for loss suffered through acts of public depository; Luhrig Coal Co. v. Jones etc. Co., 141 Fed. 622, construing contract of sale of coal for future delivery providing for furnishing of proportionate number of cars if there were not sufficient cars; Ward v. Foley, 141 Fed. 365, contract by which vendor agrees to sell his interest in three hundred and twenty acres of land at rate of $14 per acre means sale of interest in land at rate of $14 for each acre in entire tract; Stadler v. Missouri River Power Co., 139 Fed. 308, construing lease of lands permitting lessor to flood lands by means of dam as not releasing lessor from damages for flooding other lands owned by plaintiff and not mentioned in lease; Vocalion Organ Co. v. Wright, 137 Fed. 317, construing contract for interest in future inventions; Armour Packing Co. v. Metropolitan Water Co., 130 Fed. 855, 65 C. C. A. 335, where city ordinance granting water franchise provides that rates shall not exceed those charged in adjoining city in which same company furnished water, it did not include prices charged in such adjoining city after it had bought out corporation's water plant.

Syl. 3 (VII, 854). Grant of water as will pass through aperture.

Approved in Oakland Woolen Co. v. Union Gas etc. Co., 101 Me. 198, 210, 63 Atl. 920, construing grant of right to take water from

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dam for carrying on tannery business; Muscogee Mfg. Co. v. Eagle etc. Mills, 126 Ga. 224, 54 S. E. 1034, arguendo.

15 Wall. 111-123, 21 L. 49, UNITED STATES v. SINGER.

Syl. 4 (VII, 856). Duties covered by official bond.

Approved in United States v. Kauhoe, 147 Fed. 186, where sureties on postmaster's bond were given extension of time to pay liability by inspector on condition that they execute note for amount of liability, note was void; National Surety Co. v. United States, 129 Fed. 72, 63 C. C. A. 512, bond of letter-carrier for faithful discharge of duties imposed by law and departmental rules binds surety to faithful discharge of additional duty of receiving letters for registration imposed by departmental order.

15 Wall. 131-140, 21 L. 69, BOULDIN v. ALEXANDER.

Syl. 8 (VII, 859). Judicial inquiry as to expulsion from church. See 100 Am. St. Rep. 738, note.

15 Wall. 146-151, 21 L. 121, MARSHALL v. VICKSBURG.

Syl. 1 (VII, 860). Equity does not enforce forfeiture.

Approved in Brewster v. Lanyon Zinc Co., 140 Fed. 818, canceling oil and gas lease, where it had been terminated by breach of covenant, but still appeared of record; Duff v. Gilliland, 135 Fed. 585, refusing to cancel contract for assignment of patent in consideration of royalties on ground of breach of contract; Wheeling etc. R. R. Co. v. Town of Triadelphia, 58 W. Va. 520, 52 S. E. 512, enjoining forfeiture of street railway franchise where municipal officers are acting unfairly in forfeiture proceedings.

15 Wall. 151-165, 21 L. 123, SHUTTE v. THOMPSON.

Syl. 2 (VII, 861). Waiver of statutory right.

Approved in Shepard v. Barron, 194 U. S. 567, 48 L. 1120, 24 Sup. Ct. 737, abutting owners who petitioned for street improvement cannot object that front-foot rule denies due process of law; Mutual Life Ins. Co. v. Hill, 193 U. S. 560, 48 L. 794, 24 Sup. Ct. 528, declaration in policy that it is to be construed according to New York laws does not make controlling New York law relating to notice of forfeiture for nonpayment of premiums where policy contains stipulation as to notice; Womack v. Gross, 135 N. C. 380, 47 S. E. 465, where objections to irregularities in taking of deposition not made till after trial begun, they are waived; United States v. Foreman, 5 Okl. 257, 48 Pac. 98, one suing in territorial district court for money paid for land on which entry was erroneously allowed and afterward canceled need not show surrender of duplicate receipt and execution of relinquishment of claims to land as provided by act of 1880; Lone v. Mutual Life Ins. Co., 33 Wash. 581, 74 Pac. 690, where insured paid no premiums for over twelve years, administrators could not recover

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on policy, though statute provided against forfeiture for nonpayment notice given prior to day when premium payable.

15 Wall. 165-177, 21 L. 142, DUNCAN v. JAUDON.

Syl. 6 (VII, 865). Pledge of trust stock—Notice.

Approved in Sternfels v. Watson, 139 Fed. 508, applying rule to mortgage of trust lands; Ford v. Brown, 114 Tenn. 475, 88 S. W. 1038, where certificate of deposit was payable to one as "trustee," and he wrongfully indorsed same, indorsee was chargeable with notice of trust character; dissenting opinion in State v. Omaha Nat. Bank, 66 Neb. 915, 93 N. W. 339, majority holding where person having lawful custody of property consents to its receipt or disposition by another, guilty intent is essential element of conversion.

Distinguished in Interstate Nat. Bank v. Claxton, 97 Tex. 578, 80 S. W. 607, 65 L. R. A. 820, where trustee deposits cestui's money in bank, latter not liable for his misappropriation thereof, though it knew he was violating trust.

15 Wall. 211-231, 21 L. 43, OELRICHS v. SPAIN.

Syl. 1 (VII, 871). Equity—Objection of adequacy of law remedy.

Approved in Levi v. Mathews, 145 Fed. 154, denying federal jurisdiction over offense, where, in action at law to recover money due on contract, answer alleges fraud in procurement of contract.

Distinguished in Southern Pac. R. Co. v. United States, 133 Fed. 655, 66 C. C. A. 581, objection to jurisdiction of equity on ground of adequacy of remedy at law, where bill shows equity jurisdiction to grant relief sought, and court has jurisdiction over subject matter, is waived, if not taken by answer to merits.

Syl. 3 (VII, 873). Equity—Multiplicity of suits.

Approved in Southern Pac. R. Co. v. United States, 133 Fed. 656, 66 C. C. A. 581, upholding jurisdiction over suit by government against railroad and others to determine what portion of lands erroneously patented to railroad have been sold to bona fide purchaser, and to cancel patents to lands not so sold, and for accounting for moneys received for lands sold; United Cigarette etc. Co. v. Wright, 132 Fed. 197, bill to require accounting from defendant is not multifarious because different and separate transactions growing out of agency are set out, and discovery and accounting demanded as to each; Mutual Life Ins. Co. v. Blair, 130 Fed. 977, upholding equity jurisdiction over suit to cancel for fraud, insurance policy providing that on insurer's death settlement should be made by issuance of annuity policy to insured's wife, annuity payable to wife or her children; Baer v. Fidelity & Deposit Co., 130 Fed. 98, 64 C. C. A. 428, where bond to secure deposit as condition of setting aside injunction and appointment of receiver was to indemnify against damage sustained by reason of deposit, words "as court might determine" meant court then having jurisdiction of case.

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Syl. 4 (VII, 874). Equity jurisdiction over trusts.

Approved in George v. Wallace, 135 Fed. 292, 68 C. C. A. 40, where assets of insolvent bank placed in hands of trustee for benefit of another bank which assumed debts of first, holder of note executed by first bank as part of assumption contract could sue to assert pledge lien without first reducing claim to judgment.

Syl. 8 (VII, 875). Liability on injunction bond.

Approved in Sheets v. Hays, 36 Ind. App. 111, 112, 75 N. E. 22, contractor who is admitted as defendant in suit to enjoin county commissioners from paying him money or completing contract is entitled to benefit of injunction bond.

Syl. 10 (VII, 875). Counsel fees not allowed on injunction bond.

Approved in Frantz v. Saylor, 12 Okl. 41, 42, 69 Pac. 795, following rule; Lindeberg v. Howard, 146 Fed. 470, 471, attorney's fees expended in obtaining dissolution of injunction not proper element of damages in action on injunction bond.

15 Wall. 232-282, 21 L. 146, CASE OF THE STATE FREIGHT TAX.

Syl. 5 (VII, 878). Object of Congressional regulation of commerce.

Approved in Globe Elevator Co. v. Andrew, 144 Fed. 884, Laws Wis. 1905, p. 37, c. 19, as amended in 1905, providing for inspection and grading of grain, is void as to interstate commerce.

Syl. 6 (VII, 878). Transportation is constituent part of commerce.

Approved in Farris v. Henderson, 1 Okl. 393, 33 Pac. 383, holding void Okl. Stat., c. 3, art. 1, providing for inspection of cattle driven into certain county and providing for collection of certain fees per head.

Syl. 11 (VII, 884). State tax on corporate franchises.

Approved in New York v. State Board of Tax Commrs., 199 U. S. 40, 105 Am. St. Rep. 701, 50 L. 76, 25 Sup. Ct. 715, New York special franchise tax does not impair obligation of contract by which state or city granted right to construct and operate street railway in consideration of percentage of gross earnings; State v. Savage, 65 Neb. 747, 91 N. W. 721, in assessment of railroad and telegraph properties, board of equalization should include value of franchises.

Syl. 15 (VII, 885). Exclusive congressional regulation of national commerce.

Approved in Globe Elevator Co. v. Andrew, 144 Fed. 879, 883, Laws Wis. 1905, p. 37, c. 19, as amended in 1905, providing for inspection and grading of grain, is void.

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15 Wall. 284-299, 21 L. 164, STATE TAX ON RAILWAY GROSS RECEIPTS (READING R. R. CO. v. PENNSYLVANIA).

Syl. 1 (VII, 887). What is regulation of commerce.

Approved in Howard v. Illinois Central Ry. Co., 148 Fed. 1001, holding void 34 Stat. 232, c. 3073, making carriers liable to employees for damages by reason of negligence; Noble v. Amoretti, 11 Wyo. 252, 71 Pac. 881, state tax on stock of goods licensed Indian trader, located on reservation, is not regulation of commerce with Indians; dissenting opinion in People v. Miller, 178 N. Y. 205, 70 N. E. 476, earnings of domestic corporation, whose sole business is transportation of products from other states to this state, and vice versa, are not subject to franchise tax.

Syl. 4 (VII, 889). State tax on imports after package broken.

Distinguished in Southern Ry. Co. v. Greensboro etc. Coal Co., 134 Fed. 92, where cars of coal shipped from one state into another, state railroad corporation commission cannot order railroad to place them on certain tracks for unloading.

Syl. 6 (VII, 891). State tax on corporate franchises.

Approved in New York v. State Board of Tax Commrs., 199 U. S. 40, 105 Am. St. Rep. 701, 50 L. 76, 25 Sup. Ct. 715, New York special franchise tax does not impair obligation of contract by which state or city granted right to construct and operate street railway in consideration of percentage of gross earnings; State v. Savage, 65 Neb. 747, 91 N. W. 721, in assessment of railroad and telegraph properties, board of equalization should include value of franchises.

15 Wall. 300-328, 21 L. 179, STATE TAX ON FOREIGN-HELD BONDS (CLEVELAND ETC. RAILROAD CO. v. PENNSYLVANIA).

Syl. 2 (VII, 892). State's taxing power limited to territorial jurisdiction.

Approved in Union etc. Transit Co. v. Kentucky, 199 U. S. 202, 204, 50 L. 153, 26 Sup. Ct. 36, state taxation of rolling stock of domestic corporation permanently located in other states and there employed denies due process of law; Goodsite v. Lane, 139 Fed. 594, under Ohio St. 1890, § 2731, taxing all property in state and all moneys, credits or investments in stocks or otherwise of residents, where trust estate and beneficiaries were both outside of state, estate not taxable though trustee resident of state where he did not act as trustee in state; Buck v. Beach, 164 Ind. 41, 108 Am. St. Rep. 272, 71 N. E. 965, where New Yorker loaned money in Ohio secured by mortgages on property there situated, and notes and mortgages were kept by agent in Indiana, they were taxable in Indiana; Metropolitan Life Ins. Co. v. Board of Assessors, 115 La. 706, 39 So. 849, arguendo.

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Syl. 3 (VII, 893). Limits of state taxing power.

Approved in Carstairs v. Cochran, 193 U. S. 16, 48 L. 597, 24 Sup. Ct. 318, upholding state tax on liquors in bonded warehouse under statute requiring warehousemen to pay tax, and giving them lien on property therefor; State v. Western Union Tel. Co., 96 Minn. 23, 104 N. W. 572, upholding Laws 190, c. 180, p. 251, providing for taxation of tangible and intangible property of telegraph companies situated in state, as system; People v. Wells, 184 N. Y. 279, 77 N. E. 20, where foreign corporation maintained office in state for sale of its products, which are sold in original package, and took bills receivable, which are held in state until maturity and proceeds remitted to home office, bills are taxable.

Syl. 5 (VII, 894). Debts taxable at situs of creditor.

Approved in Pennsylvania etc. Ins. Co. v. Meyer, 197 U. S. 416, 49 L. 815, 25 Sup. Ct. 483, cause of action on insurance policy issued by foreign company arises within state within meaning of statute relating to service of summons on foreign corporations, where property there situated and loss was adjustable there; Buck v. Beach, 164 Ind. 42, 51, 108 Am. St. Rep. 272, 71 N. E. 965, 968, where New Yorker loaned money in Ohio, secured by mortgages on property there situated, and notes and mortages were kept by agent in Indiana, they were taxable in Indiana; State ex rel. Louisiana Imp. Co. v. Board of Assessors, 111 La. 999, 36 So. 97, municipal certificates of indebtedness are not subject to taxation; Commonwealth v. Williams, 102 Va. 785, 47 S. E. 869, under Code 1887, §§ 491, 492, relating to assessment of personalty, shares of stock are located at domicile of creditor, though evidence of same be without jurisdiction of court.

Syl. 6 (VII, 896). State tax on bonds held by nonresident.

Qualified in State v. Fidelity etc. Co., 35 Tex. Civ. 218, 80 S. W. 547, municipal securities deposited by foreign corporation in accordance with state statute are taxable in state.

Syl. 9 (VII, 897). Taxation of mortgage held by nonresident.

Approved in Adams v. Colonial etc. Mortg. Co., 82 Miss. 397, 100 Am. St. Rep. 633, 34 So. 530; loan made by nonresident is not taxable in state though negotiations for it made in state, and it is secured by mortgage on land in state.

15 Wall. 328-337, 51 L. 35, FOWLER v. RAPLEY.

(VII, 898.) Miscellaneous. Cited in State ex rel. Louisiana Imp. Co., v. Board of Assessors, 111 La. 995, 36 So. 96, discussing situs of bonds for purposes of taxation.

15 Wall. 337-355, 21 L. 89, UNITED STATES v. THOMAS.

Syl. 7 (VII, 900). Liability on bond of public depository.

Approved in Johnson v. Fleming, 116 Ky. 682, 50 S. W. 855, where court has failed to select bank as depository, commissioner is liable

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only for negligence in selection of bank for deposit of money paid into court.

Syl. 9 (VII, 901). Official bonds—Moneys taken by public enemy.

Distinguished in Van Trees v. Territory, 7 Okl. 363, 369, 54 Pac. 498, 500, fact that county moneys deposited in solvent bank which subsequently failed, resulting in loss to county without fault of treasurer, is no defense to action on bond.

15 Wall. 355-373, 21 L. 170, GRAND CHUTE v. WINEGAR.

Syl. 1 (VII, 903). Direction of verdict.

Approved in Gunn v. Union R. R. Co., 27 R. I. 326, 62 Atl. 120, upholding Gen. Laws 1896, c. 251, § 11, authorizing supreme court to direct judgment without further trial by jury.

15 Wall. 373-377, 21 L. 174, GRAND CHUTE v. WINEGAR.

Syl. 1 (VII, 905). When party deprived of jury.

Approved in Ames Realty Co. v. Big Indian Min. Co., 146 Fed. 176, Civ. Code Mont., § 1891, providing that in actions for protection of water rights all parties who divert water from same stream may be made parties and court may settle rights of all, is enforceable in federal equity court; General Elec. Co. v. Westinghouse Elec. & Mfg. Co., 144 Fed. 466, refusing to restrain violation of contract for manufacture and sale of goods which provides for payment of fifty per cent of regular sale price as liquidated damages in case of breach; Allen v. Myers, 1 Alaska, 117, denying equity jurisdiction over suit to quiet title after applicant for patent has initiated proceedings in land office; American Lighting Co. v. Public Service Corp., 134 Fed. 131, refusing to punish as contempt violation of restraining order against violation of lighting contract.

Syl. 2 (VII, 905). Adequacy of law remedy—Restraining suit on bonds.

Approved in Scottish Union etc. Ins. Co. v. Bowland, 196 U. S. 633, 49 L. 628, 25 Sup. Ct. 345, refusing to enjoin prosecution of suits against foreign corporation for recovery of personal property taxes, on ground that corporation is not personally liable therefor; Glenn v. West, 103 Va. 524, 49 S. E. 672, holder of equitable title, out of possession, cannot sue to quiet title possessor under tax title, between whom and himself there is no privity; dissenting opinion in Barnes v. Newton, 5 Okl. 458, 460, 49 Pac. 1080, 1081, majority holding successful party in contest before Land Department may enjoin adversary from further interfering with his possession.

Distinguished in Ritterhoff v. Puget Sound Nat. Bank, 37 Wash. 82, 107 Am. St. Rep. 791, 79 Pac. 602, refusing to restrain collection of note or to declare it void where complainant alleges it is forged.

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15 Wall. 377-379, 21 L. 176, KIMBALL v. WEST.

Syl. 2 (VII, 907). Rescission of executed sale.

Approved in Lynch v. United States, 13 Okl. 145, 73 Pac. 1097, refusing to cancel land patent for fraud in procurement where government not injured.

Syl. 3 (VII, 907). Rescission—Compensation for defective title.

Approved in Kentucky Distilleries etc. Co. v. Blanton, 149 Fed. 41, decreeing specific performance where slight defects in title removed before decree.

15 Wall. 384-387, 21 L. 131, EX PARTE ROBERTS.

Syl. 1 (VII, 908). Revocation of allowance of appeal.

Approved in Mackenzie v. Pease, 146 Fed. 744, circuit court of appeals may vacate order allowing appeal inadvertently entered.

Syl. 2 (VII, 908). Mandamus to hear and decide new trial.

Approved in Barber Asphalt etc. Co. v. Morris, 132 Fed. 954, 956, 67 L. R. A. 761, 66 C. C. A. 55, granting mandamus to command circuit judge to vacate order staying proceedings pending state court appeal; In re Dowd, 133 Fed. 751, arguendo.

15 Wall. 401-410, 21 L. 114, WASHINGTON ETC. RAILROAD CO. v. GLADMON.

Syl. 2 (VII, 910). Burden of proving contributory negligence.

Approved in Armour v. Carlas, 142 Fed. 722, upholding refusal to direct verdict for defendant in action for injuries caused by collision between two teams: Wabash Ry. Co. v. De Tar, 141 Fed. 934, applying rule to instructions as to presumption of due care used by traveler injured at railroad crossing; The Nellie, 730 Fed. 215, applying rule where vessel injured by submerged pile near wharf; Southern Pac. Co. v. Tomlinson, 4 Ariz. 134, 33 Pac. 712, applying rule in action for wrongful death at railroad crossing.

Syl. 3 (VII, 912). Negligence—Care required of infant.

Approved in Mundhenke v. Oregon City Mfg. Co., 47 Or. 133, 81 Pac. 979, 1 L. R. A. (N. S.) 278, question whether servant of immature years assumed risk of exposed gearing and slippery floor is for jury; Dubiver v. City Ry. Co., 44 Or. 236, 74 Pac. 918, applying rule where child of fifteen years injured by collision between streetcar and wagon which he was driving.

15 Wall 410-426, 21 L. 198, TIFFANY v. LUCAS.

Syl. 1 (VII, 914). Sale within six months of bankruptcy.

Approved in Empire State Trust Co. v. Fisher Co., 67 N. J. Eq. 100, 57 Atl. 507, holding company executing mortgage to creditor

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was not insolvent at time of its execution, though it was adjudged bankrupt one month afterward.

Distinguished in In re Pease, 129 Fed. 451, 452, where trust company through its attorney, who also represented some creditors of bankrupt, made loan with which he paid some creditors, including clients of attorney, in full, and loan was secured by chattel mortgage on stock under which lender sold it mortgage was void as preference.

15 Wall. 427-429, 21 L. 177, GRAHAM v. NORTON.

Syl. 1 (VII, 915). Federal mandamus to state officer.

Approved in United States v. Norfolk etc. Ry. Co., 138 Fed. 851, denying mandamus at suit of shipper to compel interstate railroad to make equitable distribution of cars as per contract.

15 Wall. 429-439, 21 L. 200, CITY OF RICHMOND v. SMITH.

Syl. 1 (VII, 915). Waiver of jury in civil action.

Approved in Swift & Co. v. Jones, 145 Fed. 494, circuit court, in action at law, cannot even by consent of parties order trial before special master authorized to hear and pass on issues of fact and report findings to court.

15 Wall. 439-449, 21 L. 224, HANAUER v. WOODRUFF.

Syl. 1 (VII, 916). Consideration for note—Bonds of Confederate state.

Approved in dissenting opinion in Monahan v. Monahan, 77 Vt. 151, 59 Atl. 174, 70 L. R. A. 935, majority holding complaint seeking to impress securities with trust and alleging that they were taken in defendant's name without his knowledge cannot be denied relief because securities put in defendant's name to avoid taxation.

15 Wall. 454-459, 21 L. 204, TOMLINSON v. JESSUP.

Syl. 4 (VII, 918). Charter reservation of right to alter.

Approved in Prewitt v. Security etc. Ins. Co., 119 Ky. 328, 83 S. W. 613, upholding Ky. St. 1903, § 631, providing for revocation of authority of foreign insurance company to do business in state if it removes suit to federal court.

Syl. 5 (VII, 919). Charter reservation—Repeal of tax exemption.

Distinguished in Omaha Water Co. v. City of Omaha, 147 Fed. 6, where city contractor for construction and operation of waterworks for term, and ordinance fixed maximum rates, it could not reduce specified rates.

15 Wall. 460-470, 21 L. 189, TOMLINSON v. BRANCH.

Syl. 1 (VII, 920). Privileges on consolidation of corporations.

Distinguished in Jones v. Missouri-Edison Elec. Co., 144 Fed. 775, 776, where holders of majority of stock of corporation, against pro-

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test of owners of majority of preferred stock, consolidated with corporation whose stock was owned by majority, and ratio of preferred stock to assets as thereby reduced, minority could attack consolidation for fraud.

Syl. 2 (VII, 921). Tax exemption—Consolidation of corporations.

Approved in Lee v. Atlantic etc. R. Co., 150 Fed. 790, where Virginia railroad was consolidated and merged with another under agreement providing that stock of latter canceled and stock of former issued in its place, agreement was merger and not consolidation.

15 Wall. 471-477, 21 L. 58, PROUT v. ROBY.

Syl. 8 (VII, 924). Re-entry by land for nonpayment of rent.

Approved in American Bonding Co. v. Pueblo Inv. Co., 150 Fed. 21, surrender between rent days releases tenant and his sureties for rent to accrue but not as to rent due and accrued.

15 Wall. 478-499, 21 L. 98, MILLER v. STATE.

Syl. 4 (VII, 925). Reserved power to alter corporate charter.

Approved in McKee v. Chautauqua Assembly, 130 Fed. 540, 65 C. C. A. 8, upholding act consolidating corporations whose management has been in board of trustees of one of them.

15 Wall. 500-523, 21 L. 133, HOLYOKE WATER POWER CO. v. LYMAN.

Syl. 2 (VII, 926). Right of fishery subject of ownership.

Approved in De Wilt v. Bissell, 77 Conn. 536, 60 Atl. 144, 69 L. R. A. 933, where in natural use of millpond it is necessary in summer to draw water so that portions of bottom are exposed, purchasers of property near pond cannot object to such use on account of odors.

Syl. 5 (VII, 927). Ambiguous grants construed in favor of public.

Approved in Knoxville Water Co. v. Knoxville, 200 U. S. 34, 50 L. 359, 26 Sup. Ct. 227, municipal grant of waterworks franchise does not devest city of power to construct own system; Minnesota Canal etc. Co. v. Koochiching Co., 97 Minn. 435, 107 N. W. 407, in proceedings to condemn private property all reasonable doubts as to authority are resolved in favor of land owner.

Syl. 7 (VII, 927). Right to regulate fisheries.

Approved in People v. Bootman, 180 N. Y. 9, 72 N. E. 507, upholding power of state to make possession of imported game unlawful.

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15 Wall. 524-539, 21 L. 206, THE NITRO-GLYCERINE CASE.

Syl. 2 (VII, 929). Presumption as to carrier's knowledge of packages.

Approved in Clark v. Missouri etc. Ry. Co., 179 Mo. 94, 77 S. W. 890, common carrier is not chargeable with notice that Texas cattle carried by it are dangerous and vicious and liable to injure servants.

Syl. 3 (VII, 929). Negligent handling by carrier—Knowledge of contents.

Approved in Skinn v. Reutter, 135 Mich. 59, 106 Am. St. Rep. 384, 97 N. W. 153, 63 L. R. A. 743, purchaser of hogs from dealer, who bought and sold them to him without knowledge of their diseased condition, may recover of original seller for death of own hogs which he placed with diseased ones.

Syl. 4 (VII, 930). Injury to passenger prima facie negligence.

See 113 Am. St. Rep. 988, note.

Syl. 6 (VII, 930). Burden of proving negligence.

Approved in Greeley v. Foster, 32 Colo. 299, 75 Pac. 353, no presumption of negligence arises from accident to city employee excavating trench in street; Chicago etc. R. R. Co. v. Reilly, 212 Ill. 511, 103 Am. St. Rep. 243, 72 N. E. 455, where one standing at crossing is injured by scantling projecting from passing flat-car, negligence of railroad not presumed; East Tennessee etc. R. R. Co. v. Lindamood, 111 Tenn. 463, 78 S. W. 100, applying rule in action for injuries to brakeman caused by alleged defects in brakes. See 113 Am. St. Rep. 1005, note.

Syl. 7 (VII, 931). Negligence—Measure of care against accident.

Approved in Southern Ry. Co. v. Chatman, 124 Ga. 1036, 53 S. E. 697, determining liability of railroad for accident at street crossing; Johnson v. Union Pac. Coal Co., 28 Utah, 51, 76 Pac. 1090, 67 L. R. A. 506, employer building track in mine shaft who lowers rails without fastening them to car so that one fell over side and injured employee working at bottom, is liable, in absence of proof, that mode of work was as safe as mode in general use; Globe Nav. Co. v. Maryland Casualty Co., 39 Wash. 308, 81 Pac. 829, where surety agreed to indemnify vessel owners against damages for injuries suffered by employees through owner's negligence, and judgment against owners was based on failure to supply medical assistance, surety could not set up ignorance of facts exempting it from liability where it had copy of complaint in suit.

15 Wall. 547-549, 21 L. 231, HANNEWINKLE v. GEORGETOWN.

Syl. 1 (VII, 932). Restraining collection of illegal tax.

Approved in Devine v. Los Angeles, 202 U. S. 335, 50 L. 1054, 26 Sup. Ct. 652, verbal assertions of ownership do not constitute cloud

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on title, which equity will remove; Illinois Life Ins. Co. v. Newman, 141 Fed. 451, denying power of federal equity court to enjoin collection of state tax on ground of its illegality, though such power is conferred in state courts.

Syl. 3 (VII, 933). Cloud on title—Void tax sale.

Approved in Ashburn v. Graves, 149 Fed. 972, refusing to cancel deed void on its face as cloud on title.

15 Wall. 549-552, 21 L. 232, RIGGIN v. MAGUIRE.

Syl. 1 (VII, 933). Contract liability provable in bankruptcy.

Approved in In re Ellis, 143 Fed. 106, subcontractor has no provable claim against contractor under Bankr. Act., c. 541, § 59b, for work for which contractor has not been paid by owner, where contract provides that contractor's liability does not accrue till contractor paid; In re Pettingill, 137 Fed. 146, claim based on liability of bankrupt on guaranty executed by him of payment by corporation of certain rate of dividends on stock held by another is not provable debt as to dividends not due at time of bankruptcy; Conklin v. United States Shipbuilding Co., 136 Fed. 1008, surety on bond of insolvent corporation has no claim provable as debt in insolvency proceedings against corporation merely because of pendency of suit on bond; Dight v. Chapman, 44 Or. 272, 75 Pac. 587, 65 L. R. A. 793, where there was decree establishing indebtedness of corporation and awarding recovery against it for that amount and against stockholders for their proportion of capital stock, decree as against nonresident stockholder not party to suit, made liability debt provable on his subsequent bankruptcy.

15 Wall. 552-555, 21 L. 60. FROW v. DE LA VEGA.

Syl. 1 (VII, 935). Decree against one joint defendant pending suit.

Approved in First Baptist Church v. Harper, 191 Mass. 210, 77 N. E. 781, where, under R. Laws, c. 182, §§ 6-10, certain defendants to bill to quiet title failed to appear and no interlocutory decree taking bill pro confesso was ordered case not ready for final disposition.

15 Wall. 562-566, 21 L. 250, YOUNG v. GODBE.

Syl. 3 (VII, 936). Interest, when recoverable.

Approved in Harding v. York Knitting Mills, 142 Fed. 229, allowing interest on claim for goods sold on definite term of credit.

15 Wall. 566-573, 21 L. 251, POLICE JURY v. BRITTON.

Syl. 1 (VII, 937). Negotiable refunding securities.

Approved in Glass v. Parish of Concordia, 113 La. 554, 37 So. 192, following rule.

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Syl. 2 (VII, 937). Municipalities may incur debts through contracts.

Approved in Luther v. Wheeler, 73 S. C. 91, 52 S. E. 876, where town of less then one thousand inhabitants under municipal resolution gave note for money used for necessary public building, it is invalid, but holder may recover of town amount received and used as money had and received.

Syl. 3 (VII, 937). Municipal contracts creating debts subject to equities.

Approved in Morrison v. Austin State Bank, 213 Ill. 484, 104 Am. St. Rep. 225, 72 N. E. 1113, municipal warrants, though negotiable in form, are not within rule guarding commercial paper in hands of bona fide purchaser.

Syl. 5 (VII, 937). Issuance of negotiable parish bonds.

Cited in Glass v. Parish of Concordia, 113 La. 547, 37 So. 189, arguendo.

15 Wall. 573-580, 21 L. 229, PARTRIDGE v. THE INSURANCE CO.

Syl. 1 (VII, 940). Parol to incorporate custom into contract.

Approved in Harding v. Cargo etc. of Coal, 147 Fed. 976, provision in charter-party for ship to carry coal, "vessel to have turn in loading," does not make port custom to give steamers preference in filling bunkers part of contract, where custom unknown to parties; Lillard v. Kentucky Distilleries etc. Co., 134 Fed. 182, 67 C. C. A. 74, evidence of custom is admissible to show that contract to deliver distillery slop at distiller's cattle-feeding lot, contemplated compliance with custom to supply lot with pens and troughs.

Syl. 3 (VII, 940). State rules of setoff in federal courts.

Distinguished in Anglo-American etc. Co. v. Lombard, 132 Fed. 732, 68 C. C. A. 89, in federal action at law to enforce stockholder's statutory liability defendant cannot set off indebtedness from corporation to him.

15 Wall. 580-591, 21 L. 236, MUTUAL LIFE INS. CO. v. TERRY.

Syl. 4 (VII, 941). Insurance—Suicide while insane.

Approved in Knapp v. Order of Pendo, 36 Wash. 606, 79 Pac. 211, following rule.

15 Wall. 610-624, 21 L. 212, GUNN v. BARRY.

Syl. 3 (VII, 944). Remedies as part of contract obligation.

Approved in Ex parte Goldsmith, 68 S. C. 538, 47 S. E. 987, determining right of widow in balance of proceeds of mortgage foreclosure on lands which they had abandoned as home.

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Syl. 5 (VII, 946). Statute increasing amount of exempt

Approved in Welsh v. Cross, 146 Cal. 633, 106 Am. St. 81 Pac. 233, amendment of 1897 to Code Civ. Proc., § 70 ing time for redemption from execution sale, is void as ments existing at time of its passage.

Distinguished in Lewis v. Goldthwaite Nat. Bank, 36 Tex. 81 S. W. 799, Laws 1897, p. 131, c. 101, exempting from ga for six months after sale proceeds of voluntary sale of h applies to debts existing prior to its passage.

(VII, 944.) Miscellaneous. Cited in In re Mullen, 140 bankrupt who is registered hunting guide under Maine la titled, under Rev. St. Me., c. 83, § 64, par. 6, to exemption but not to rifle.

15 Wall. 643-649, 21 L. 244, CAMMACK v. LEWIS.

Syl. 1 (VII, 948). Life insurance—Wager policy.

Approved in Gould v. New York Life Ins. Co., 132 Fed. 9 bankrupt's life policy, payable to his administrator, had render value, and his trustee allowed it to lapse by failin premium, on bankrupt's death, policy passed to administra don v. Ware Nat. Bank, 132 Fed. 446, 67 L. R. A. 550, 65 580, purchaser of policy from pledgee thereof takes good tit icy and its proceeds though he has no insurable intere sured's life; Metropolitan etc. Ins. Co. v. Elison, 72 Kan Pac. 412, 3 L. R. A. (N. S.) 934, assignment of half-intere icy to one having no insurable interest, in consideration signee pays premiums, is void.

Distinguished in Mechanics' Nat. Bank v. Comins, 72 1 101 Am. St. Rep. 650, 55 Atl. 195, upholding assignment of icy to one having no insurable interest where assignment

Syl. 2 (VII, 948). Assignment of life policy to creditor o

Approved in Wilton v. New York Life Ins. Co., 34 Tex. 78 S. W. 404, niece having no expectation of pecuniary ben uncle further than probability of occasional gift has no ins terest in his life.

Distinguished in Hinton v. Mutual Reserve etc. Life A N. C. 323, 102 Am. St. Rep. 545, 65 L. R. A. 161, 47 S. E. 4 policy payable to estate of insured was secured under a between insured and one having no insurable interest th would pay premiums and take proceeds, and policy was as him, he could not sue on it as administrator.

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15 Wall. 649-660, 21 L. 220, NEW ORLEANS RAILROAD CO. v. HANNING.

Syl. 2 (VII, 950). Liability of principal for agent's acts.

Approved in Arthur v. Texas etc. Ry. Co., 139 Fed. 131, where railroad gave receipt for cotton delivered by plaintiff to independent compress company on compress receipt, and cotton burned while on compress company's platform, railroad not liable for negligence of compress company.

Syl. 3 (VII, 951). Master and servant—Contract to furnish labor.

Distinguished in Kelleher v. Schmidt & Henry Mfg. Co., 122 Iowa, 638, 98 N. W. 483, when manufacturing corporation let out part of work to firm, which occupied part of corporation's building and used its machinery, but controlled its own employees, corporation not liable for injuries to employee of firm.

15 Wall. 664-671, 21 L. 246, MERCHANTS' ETC. INSURANCE CO. v. LYMAN.

Syl. 3 (VII, 952). Parol to show prior parol insurance contract.

Approved in Connecticut Fire Ins. Co. v. Buchanan, 141 Fed. 889, 892, applying rule where policy provided for cancellation if occupants be changed or use be changed, and use of building as normal school had been suspended at time of loss and new school tenant had not taken possession.

Syl. 5 (VII, 952). Merger of prior negotiations in writings.

Approved in Young v. St. Paul etc. Ins. Co., 68 S. C. 390, 47 S. E. 682, following rule; Liverpool etc. Ins. Co. v. Richardson Lumber Co., 11 Okl. 581, 601, 69 Pac. 936, 943, fact that local and state agents examined property and knew its situation is no waiver of written clauses in policy.

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XVI WALLACE.

16 Wall. 1-6, 21 L. 491, DAIR v. UNITED STATES.

Syl. 1 (VII, 954). Surety—Bond to be executed by others.

Approved in City of Butte v. Cook, 29 Mont. 95, 74 Pac. 69, where names of two sureties appear in body of bond, which is signed by one only, surety signing may defend on ground that liability was conditioned on cosurety signing; Rollins v. Ebbs, 138 N. C. 146, 147, 153, 50 S. E. 579, 581, where sureties in guardian's bond from which penalty was omitted, gave it to another for delivery, and when filed penalty was inserted, sureties estopped to assert its invalidity; Baker County v. Huntington, 46 Or. 282, 283, 79 Pac. 190, 191, where sheriff's bond did not show sheriff's name as principal and name of only one of six signing sureties appeared in body, and entries opposite names showed they had signed only for $7,000, whereas bond called for $10,000, sureties could deny sheriff's want of authority to deliver bond.

Syl. 2 (VII, 956). Estoppel—Contradiction injuring others.

Approved in Newman v. Scarborough, 115 La. 866, 40 So. 250, where person signs guaranty thinking it is for eleven hundred dollars, when in reality it is for so many thousands, guaranty is binding only for eleven hundred.

16 Wall. 6-16, 21 L. 272, LYNDE v. WINNEBAGO COUNTY.

Syl. 1 (VII, 956). Special tax levy for courthouse.

Approved in Theis v. Commissioners of Washita Co., 9 Okl. 650, 60 Pac. 508, under Stat. 1890, where county commissioners are authorized by vote of people to construct bridges and levy tax for such purpose, they may make contract therefor and issue warrants in payment thereof in anticipation of fund.

Syl. 4 (VII, 958). Absent judge not functus officio.

Approved in Watkins v. Mooney, 114 Ky. 656, 71 S. W. 625, president of board of aldermen cannot appoint police commissioner while mayor was absent for day at another town twenty-five miles away.

16 Wall. 36-130, 21 L. 394, SLAUGHTER-HOUSE CASES.

Syl. 3 (VII, 900). Extent of police power.

Approved in Bland v. People, 32 Colo. 323, 105 Am. St. Rep. 80, 76 Pac. 360, 65 L. R. A. 424, upholding Laws 1899, p. 175, prohibiting

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use of unregistered docked horses; State v. Robb, 100 Me. 186, 60 Atl. 876, upholding city ordinance giving exclusive privilege of collecting garbage to persons specially appointed; Squire v. Tellier, 185 Mass. 20, 102 Am. St. Rep. 322, 69 N. E. 313, upholding Stat. 1903, p. 389, providing that sale of stock goods is void as to creditors unless inventory made and buyer notify creditors; O'Neil v. State, 115 Tenn. 444, 90 S. W. 631, upholding Acts 1901, p. 115, prohibiting practice of medicine without license, as applied to one who diagnosed diseases by microscopic examination of drop of blood and treated them by electric lights; dissenting opinion in Wright v. Hart, 182 N. Y. 354, 75 N. E. 413, 2 L. R. A. (N. S.) 338, majority holding void Laws 1902, p. 1249, making sale of stock of merchandise in bulk, fraudulent as to creditors unless seller makes inventory five days prior to sale and buyer notifies creditors.

Syl. 4 (VII, 962). Police power exclusive in states.

Approved in Ex parte Dick, 141 Fed. 7, where government has conveyed lands within state ceded to it by Indians, and lands have passed to individuals and municipality of state formed thereon, they are not subject to laws against introduction of liquor into Indian country.

Syl. 5 (VII, 962). Police power—Slaughter monopoly.

Approved in Leigh v. Green, 193 U. S. 89, 101 Am. St. Rep. 606, 48 L. 627, 24 Sup. Ct. 390, holder of lien on realty not denied due process by lack of personal service of notice of proceeding in rem to enforce tax sale purchaser's lien whose notice is given by publication; Grainger v. Douglas Park Jockey Club, 148 Fed. 521, 522, 523, 529, 542, upholding Act Ky. March 26, 1906, creating state racing commission and giving it exclusive control over regulation of racing of running horses; O'Reilly De Camara v. Brooke, 135 Fed. 388, 389, where Spanish subject owned perpetual exclusive right to slaughter of cattle in Havana under Spanish grant, franchise was private property protected by Spanish treaty; State v. Robb, 100 Me. 188, 60 Atl. 877, upholding municipal ordinance giving exclusive privilege of collecting garbage to persons specially appointed.

Distinguished in White v. Holman, 44 Or. 184, 74 Pac. 934, Laws 1903, p. 238, creating sailor's boarding-house commission with power to license or reject applicants, does not authorize grant of but one license so as to create monopoly.

Syl. 7 (VII, 964). Involuntary servitude includes peonage.

Approved in Clyatt v. United States, 197 U. S. 218, 49 L. 730, 25 Sup. Ct. 429, upholding Rev. St., §§ 1990, 5526, prohibiting peonage in any state or territory; Ex parte Riggins, 134 Fed. 406, 407, 423, negro in charge of sheriff who is taken out and lynched by conspirators because of his race is denied rights and privileges secured

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by constitution: United States v. Moore, 129 Fed. 634, denying federal jurisdiction to punish conspiracy to oppress citizen to prevent his forming miners' union, in furtherance of which he was assaulted.

Syl. 8 (VII, 965). Construction of constitutional amendments.

Approved in Pope v. Williams, 98 Md. 71, 103 Am. St. Rep. 379, 56 Atl. 545, 66 L. R. A. 398, upholding Acts 1902, p. 204, providing no one coming from another state shall register as voter until one year after declaration of intention.

Syl. 9 (VII, 965). Fourteenth amendment—Citizenship of United States.

Approved in In re Heff, 197 U. S. 504, 49 L. 855, 25 Sup. Ct. 506, Indian allottee, on receipt of first patent under 24 Stat. 388, c. 119, is within provision of § 6, of that act, subject to laws of state where he resides; Pope v. Williams, 98 Md. 67, 103 Am. St. Rep. 379, 56 Atl. 544, 66 L. R. A. 398, upholding Acts 1902, p. 204, providing that no one coming from another state shall register as voter until one year after declaration of intention.

Syl. 11 (VII, 966). Privileges and immunities of citizens.

Approved in United States v. Moore, 129 Fed. 635, denying federal jurisdiction to punish conspiracy to oppress citizen to prevent him from forming miners' union, in furtherance of which he was assaulted; Sanders v. Commonwealth, 17 Ky. 6, 111 Am. St. Rep. 221, 77 S. W. 359, 1 L. R. A. (N. S.) 932, upholding Ky. St. 1899, § 1274, prohibiting sale of milk from cows fed on "still slop."

Syl. 15 (VII, 969). Due process—Slaughter-house monopoly.

Approved in In re Zehizhuzza, 147 Cal. 335, 81 Pac. 958, upholding Oakland ordinance giving city exclusive right to remove garbage and providing fee for removal thereof, recoverable by civil action.

Syl. 18 (VII, 970). Extent of police power.

Approved in Block v. Schwartz, 27 Utah, 405, 76 Pac. 28, holding void act of 1901, regulating sales of stocks of merchandise in bulk; State v. Brown, 37 Wash. 100, 107 Am. St. Rep. 798, 79 Pac. 636, 68 L. R. A. 889, holding void Laws 1891, p. 314, requiring examination and license by dental board before one may own, run or manage dental office; In re Aubrey, 36 Wash. 315, 104 Am. St. Rep. 952, 78 Pac. 902, holding void Sess. Laws 1901, p. 116, providing for examination and registration of horseshoers in certain cities.

Syl. 22 (VII, 971). Scope of guaranty of life and property.

Approved in Martell v. White, 185 Mass. 263, 102 Am. St. Rep. 341, 69 N. E. 1089, where manufacturers formed association, by-law of which provided for assessment of members doing business with non-members, and plaintiff's business thereby ruined, members were lia-

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ble; State v. Chapman, 69 N. J. L. 466, 55 Atl. 95, upholding Pub. Law, 1898, p. 119, regulating practice of dentistry: Schnaier v. Navarre Hotel etc. Co., 182 N. Y. 89, 108 Am. St. Rep. 790, 74 N. E. 562, 70 L. R. A. 722, holding void Laws 1896, p. 1052, prohibiting firms in New York from engaging as master plumbers unless each member is registered after examination.

(VII, 960.) Miscellaneous. Cited in Ex parte Moebus, 137 Fed. 156, upholding federal jurisdiction over petition for habeas corpus alleging that petitioner since extradition has been confined only on governor's warrant.

16 Wall. 130-142, 21 L. 442, BRADWELL v. STATE.

Syl. 1 (VII, 972). Privileges and immunities of citizens.

Approved in Wadleigh v. Newhall, 136 Fed. 946, upholding Cal. Code Civ. Proc., § 1747, authorizing proceedings for appointment of guardians for persons and estates of minors having no guardians by will or deed.

Syl. 2 (VII, 973). Right to practice law—Privilege of citizenship.

Approved in In re Branch, 70 N. J. L. 548, 57 Atl. 431, act of 1903, relieving registered law students, whose clerkship began more than three years prior to passage of act, from examination, is void.

16 Wall. 147-156, 21 L. 426, CARLISLE v. UNITED STATES.

Syl. 2 (VII, 974). Pardon obliterates offense.

Approved in State v. Lewis, 111 La. 696, 35 So. 817, person pardoned cannot be reinstated as member of grand jury whose term has expired.

Syl. 3 (VII, 975). General terms in statute limited to application.

Approved in Mottley v. Louisville etc. R. Co., 150 Fed. 411, 34 Stat. 584, c. 3591, prohibiting interstate passes, did not invalidate contract made prior to its passage, by which interstate carrier agreed to issue free passes for life of complainant in consideration of release of claim for damages.

Syl. 6 (VII, 976). Claims against government.

See 103 Am. St. Rep. 311, note.

16 Wall. 166-177, 21 L. 350, HANRICK v. BARTON.

Syl. 1 (VII, 977). Mexican grant—Inurement of grant to attorney.

Approved in Allen v. Parmalee, 142 Fed. 363, where grantee of Texas land to be located as vacant land executed power of attorney to locate such lands and also act of sale, to attorney, and latter executed substitution to another, giving him same powers, and latter located land, substitution was act of sale.

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Syl. 6 (VII, 977). Admissibility of certified copy of lost deed.

Approved in Surghenor v. Ranger, 133 Fed. 459, where purchaser of concession land in Texas agreed to sell to another, who agreed to perform conditions of grant and latter transferred to another, who had land surveyed and got title of possession, there was act of sale.

16 Wall. 177-185, 21 L. 354, THE CAYUGA.

Syl. 2 (VII, 978). Collision—Towing with long hawser.

Approved in The Inca, 148 Fed. 368, holding tug liable for sinking of lumber bark in tow by being grounded on rock in channel known to be there by navigators but not known to tug.

16 Wall. 196-203, 21 L. 465, KOONTZ v. NORTHERN BANK.

Syl. 1 (VII, 979). Inquiry by purchaser at receiver's sale.

Approved in Threadgill v. Colcord, 16 Okl. 470, 85 Pac. 710, following rule.

16 Wall. 203-233, 21 L. 447, DAVIS v. GRAY.

Syl. 1 (VII, 980). Receiver appointed for benefit of all.

Approved in Vila v. Grand Island etc. Co., 68 Neb. 240, 110 Am. St. Rep. 416, 97 N. W. 616, denying jurisdiction to appoint receiver for corporation at suit of private parties where sole object is to sequestrate property and business of corporation.

Syl. 2 (VII, 980). Leave of court required to sue receiver.

Approved in Commonwealth Roofing Co. v. North American Trust Co., 135 Fed. 989, 68 C. C. A. 418, where building contractor had finished one building and was working on another at time receiver appointed, and four months after receiver appointed he attached by leave of court and submitted claim for liens in receivership suit, he did lose right to liens by failure to attach with statutory time; Ridge v. Manker, 132 Fed. 602, 67 C. C. A. 596, decree against receiver of another court is not nullity attackable collaterally merely because record fails to show affirmatively grant of permission to sue; Hampton Roads etc. Co. v. Newport News etc. Co., 131 Fed. 536, where federal court has jurisdiction of assets of street railroad operating same through receiver, it may, at suit of receiver, restrain competitor from obstructing highway in such way as to destroy receiver's property, irrespective of citizenship.

Syl. 3 (VII, 981). Equity receiver's powers.

Approved in Mason v. Wolkowich, 150 Fed. 701, federal bankruptcy court may enforce summarily completion of sale of assets made by receiver; Bay State Gas Co. v. Rogers, 147 Fed. 559, where receiver appointed in domiciliary district of corporation and thereafter ancillary appointment made in other district, receiver could sue in latter district in name of corporation to recover profits made by corpora-

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tion's trustee; Johnson v. Southern B. & L. Assn., 132 Fed. 543, 544, tax deed executed after property has passed into custody of court by its appointment of receiver for mortgagee is void and ineffective to cut off receiver's right of redemption.

Syl. 4 (VII, 982). State as party to action.

Approved in State v. Mortensen, 69 Neb. 385, 95 N. W. 834, denying jurisdiction over mandamus to compel board of public lands and buildings to perform contract for leasing of convict labor. See 108 Am. St. Rep. 832, note.

Distinguished in Sanders v. Saxton, 182 N. Y. 480, 481, 108 Am. St. Rep. 826, 75 N. E. 530, no action lies at suit of land owner against land commissioner and comptroller to have comptroller's deed to state on delinquent tax sale declared void.

Syl. 5 (VII, 982). Suit against officer not against state.

Approved in Smith v. Alexander, 146 Fed. 108, refusing preliminary injunction in suit against board of state commissioners, real purpose of which is enforcement of contract between state and complainant.

Syl. 6 (VII, 984). Injunction against land officials.

Approved in Walker v. United States, 139 Fed. 413, where marshal rendered accounts against government for services of deputies, which were audited, allowed and paid in accordance with recognized rules, government cannot recover same years after he has gone out of office; dissenting opinion in Henry v. State, 87 Miss. 89, 39 So. 882, majority refusing to restrain prison board of control from carrying out contract to work plantation with convicts. See 108 Am. St. Rep. 838, 839, note.

Distinguished in De Laittre v. Board of Commrs., 149 Fed. 802, refusing to compel state land commissioners to issue deeds for state land; Sanders v. Saxton, 182 N. Y. 479, 108 Am. St. Rep. 826, 75 N. E. 529, action by owner of land against land commissioner and comptroller to have deed executed by comptroller to state on delinquent tax sale declared void cannot be maintained.

Syl. 7 (VII, 986). Federal suit loses no state remedies.

Approved in Harrison v. Remington Paper Co., 140 Fed. 399, under Kan. Civ. Code, § 23, where there is voluntary dismissal without prejudice of state action, new suit is maintainable in federal court; Frank v. Butler County, 139 Fed. 126, refusing equitable relief on county aid bonds where holder delayed twenty years and did not avail himself of remedies allowed by state statute; Duryea v. American Woodworking etc. Co., 133 Fed. 332, state does not lose right to enforce annual license fee against property of insolvent corporation because at time of its assessment property was in hands of federal receiver; Barber Asphalt etc. Co. v. Morris, 132 Fed. 949, 67 L. R. A. 761, 66 C. C. A. 55, federal jurisdiction not affected by provision of city charter relating

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to appeals from allowance and rejection of claims against city and prohibiting payment of claims pending appeal.

Distinguished in Illinois Life Ins. Co. v. Newman, 141 Fed. 450, federal court cannot enjoin collection of state tax on ground of its illegality though such power is conferred on state courts; Anthony v. Burrow, 129 Fed. 789, denying jurisdiction to enjoin state officers acting under state statute from issuing certificate of nomination to Congressional candidate.

Syl. 9 (VII, 987). Equitable relief from deed—Conditions precedent.

Approved in Rannels v. Rowe, 145 Fed. 299, deed to railroad provided road built three years, and if not built in that time lands to revert, was on condition subsequent.

Syl. 10 (VII, 987). Conditions subsequent, when enforced at law.

Approved in Wilmore Coal Co. v. Brown, 147 Fed. 938, second deed by grantor after default of condition in deed of mineral under certain land that it is void unless railroad built within five years, devests title of first grantee though grantor also assigns to grantee all rights under first deed.

Syl. 12 (VII, 988). State as party to contract.

Cited in Gilmore v. Schenck, 115 La. 400, 39 So. 45, arguendo.

16 Wall. 244-249, 21 L. 326, HUMPHREY v. PEGUES.

Syl. 1 (VII, 990). Privileges of other corporations—Tax exemption.

Approved in Gunter v. Atlantic etc. R. R. Co., 200 U. S. 279, 281, 283, 284, 285, 287, 288, 289, 290, 291, 293, 50 L. 481, 482, 483, 484, 485, 486, 487, 26 Sup. Ct. 252, determining effect of principal case as res adjudicata; Lake Drummond Canal etc. Co. v. Commonwealth, 103 Va. 346, 49 S. E. 509, sale on foreclosure of trust deed of all property and franchises of corporation does not pass to purchaser tax immunity granted by state to corporation and its assigns.

Syl. 2 (VII, 991). Charter tax exemption.

Approved in Prewitt v. Security etc. Ins. Co., 119 Ky. 328, 83 S. W. 613, upholding Ky. St. 1903, § 631, providing for revocation of license of foreign insurance company removing suit to federal court.

16 Wall. 250-258, 21 L. 278, DICKINSON v. PLANTERS' BANK.

Syl. 1 (VII, 992). Review of facts on trial to court.

Approved in De La Rama v. De La Rama, 201 U. S. 310, 50 L. 768, 26 Sup. Ct. 485, finding of fact stated in opinion of trial court is not finding of fact within statute; Townsend v. Beatrice Cemetery Assn., 138 Fed. 383, on appeal in equity, recourse cannot be had to opinion of lower court to ascertain facts where there is no

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evidence in record; York v. Washburn, 129 Fed. 566, 64 C. C. A. 132, opinion of trial judge setting forth reasons for decision does not become special finding by being copied into judgment entry; Larson v. Union P. R. Co., 70 Neb. 266, 97 N. W. 315, appointment of administrator made contrary to statute providing order in which persons are entitled to administrator is not collaterally attackable.

16 Wall. 258-271, 21 L. 493, KNICKERBOCKER INSURANCE CO. v. COMSTOCK.

Syl. 3 (VII, 993). Mode of re-examining facts tried by jury.

Approved in Seliner v. McKay, 2 Alaska, 566, in action to quiet title, where answer shows defendant rightfully in possession was ousted by plaintiff and wrongfully kept out, defendant entitled to jury; Bradford v. Territory, 1 Okl. 370, 34 Pac. 67, proceeding by information in nature of quo warranto is suit at common law triable by jury.

Syl. 4 (VII, 994). Mandamus to compel decision.

Approved in Barber Asphalt etc. Co. v. Morris, 132 Fed. 954, 956, 67 L. R. A. 761, 66 C. C. A. 55, granting mandamus to compel circuit judge to vacate order staying proceedings pending state appeal; In re Dowd, 133 Fed. 751, arguendo. See 98 Am. St. Rep. 891, note.

16 Wall. 271-277, 21 L. 313, CARPENTER v. LONGAN.

Syl. 3 (VII, 995). Mortgage secured by note—Bona fide purchaser.

Approved in Cudahy Packing Co. v. State Nat. Bank, 134 Fed. 546, 67 C. C. A. 662, mortgage securing negotiable note passes free from equities between original parties to bona fide indorsee of note; First Nat. Bank v. National Live Stock etc. Bank, 13 Okl. 723, 76 Pac. 131, assignee before maturity of note secured by chattel mortgage, though assignment of mortgage not made, is protected against subsequent purchasers in good faith.

16 Wall. 277-310, 21 L. 280, BUCHANAN v. SMITH.

Syl. 2 (VII, 999). Bankruptcy—Probable cause to believe insolvent.

Approved in In re McMurtrey, 142 Fed. 856, transfer by insolvent firm of all its property to certain creditors on their demand and threats to sue, which property was accepted in full payment of claims largely exceeding its value, is voidable preference; In re Moody, 134 Fed. 633, where bankrupt within four months of bankruptcy sold stock of goods to firm in exchange for farm taken in wife's name, and firm also paid his debt to bank of which members were stockholders and officers, firm and bona fide purchaser; Crandall v. Coats, 133 Fed. 969, holding preferred creditors of bankrupt charged with notice of insolvency at time of conveyance; Capital Nat. Bank v. Wilkerson, 36 Ind. App. 474, 75 N. E. 839, holding preferred creditor had reason-

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able cause to believe at time payments made that preference was obtained.

16 Wall. 314-318, 21 L. 357, WALKER v. WHITEHEAD.

Syl. 1 (VII, 1001). Law governing contracts.

Approved in In re Thompson Milling Co., 144 Fed. 316, attorney's fee provided for in note payable on condition that default made in payment of note, and it is placed in hands of attorney for collection or suit brought thereon, is not fixed liability provable against bankrupt's estate; Ex parte Folsom, 131 Fed. 503, holding constitutional amendment abolishing corporate existence of certain townships which had issued railroad aid bonds, impairs obligation of contracts; Boyd v. Schneider, 131 Fed. 226, 70 L. R. A. 264, 65 C. C. A. 209, national bank act providing for administration of affairs of insolvent bank by receiver does not prevent depositors from suing directors for negligently loaning asset in violation of act; State ex rel. Louisiana Imp. Co. v. Board of Assessors, 111 La. 1001, 36 So. 98, arguendo.

16 Wall. 318-330, 21 L. 297, MICHIGAN CENTRAL R. R. CO. v. MINERAL SPRINGS MFG. CO.

Syl. 1 (VII, 1003). Liability of connecting carrier.

Approved in Pittsburgh etc. Ry. Co. v. Bryant, 36 Ind. App. 345, 75 N. E. 831, carrier receiving goods for shipment to consignee beyond its own line does not become liable for loss beyond its own line; Fisher v. Boston etc. R. R. Co., 99 Me. 343, 345, 105 Am. St. Rep. 283, 59 Atl. 534, 68 L. R. A. 390, determining liability of carrier for deviation from route without notice to shipper. See 97 Am. St. Rep. 97, note.

16 Wall. 331-336, 21 L. 339, COFIELD v. McCLELLAND.

Syl. 1 (VII, 1006). Entries in trust under Denver relief act.

Approved in Martin v. Hoff, 7 Ariz. 252, 64 Pac. 447, unoccupied lots entered under Comp. Laws, c. 80, § 3, could be disposed of only by legislative authority, and mandamus does not lie to compel trustee to convey lots to petitioner who had settled thereon for ten years.

16 Wall. 338-347, 21 L. 499, MERRILL v. PETTY.

Syl. 2 (VII, 1008). Revision of judgment of lower court.

Cited in Taylor v. Colorado Iron Works, 33 Colo. 186, 80 Pac. 131, arguendo.

16 Wall. 352-366, 21 L. 341, McNITT v. TURNER.

Syl. 7 (VII, 1010). Collateral attack on administrator's sale.

Approved in White v. Martin, 2 Alaska, 498, jurisdiction of probate court to appoint guardian for lunatic's property not collaterally attackable.

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(VII, 1009). Miscellaneous. Cited in McGuire v. Blount, 199 U. S. 144, 50 L. 128, 26 Sup. Ct. 1, plaintiff in ejectment must recover upon strength of own title.

16 Wall. 366-377, 21 L. 287, TAYLOR v. TAINTOR.

Syl. 1 (VII, 1011). Concurrent jurisdiction—Priority.

Approved in In re Southwestern Bridge etc. Co., 133 Fed. 571, where Kansas corporation and Oklahoma corporation each did business in its own state, but were owned and managed by same persons, and business of both intermingled and both became bankrupt in Kansas and later receiver appointed for Oklahoma corporation, Kansas courts had priority of jurisdiction; Threadgill v. Colcord, 16 Okl. 469, 85 Pac. 709, where purchaser at master's sale under decree is himself a party to suit in which decree entered, he cannot collaterally attack regularity of decree.

Distinguished in Beavers v. Haubert, 198 U. S. 85, 49 L. 953, 25 Sup. Ct. 573, prosecution of proceedings to remove to another district for trial one charged with offense is not unlawful interference with jurisdiction of circuit court in whose custody accused held to await trials pending in such court, where such court consented.

Syl. 2 (VII, 1012). Extradition—Requiring prisoner to appear.

Approved in In re Beavers, 131 Fed. 368, where federal prisoner was removed to certain district for trial on indictment pending in such district, he cannot object to removal to another district on indictment pending in such district before trial in first district. See 112 Am. St. Rep. 110, 115, 129, note.

Syl. 4 (VII, 1013). Dominion of bail over prisoner.

Approved in United States v. Peckham, 143 Fed. 628, one who is arrested in one federal district for removal to another for trial on criminal charge, and bound over, and gives bail for appearance in other district, cannot obtain review of magistrate's decision on his surrender by his bail; Mackenzie v. Barrett, 141 Fed. 965, 966, one giving bail on appeal from order on ne exeat is entitled to writ of habeas corpus; Coleman v. State, 121 Ga. 598, 49 S. E. 717, without proof of authority to do so, son of bail cannot empower third person to recapture principal.

16 Wall. 378-390, 21 L. 358, NEW ORLEANS ETC. INSURANCE CO. v. PIAGGIO.

Syl. 2 (VII, 1014). New venire where facts on record.

Approved in Farrar v. Wheeler, 145 Fed. 487, where in action for personal injuries only error related to assessment of damages, circuit court of appeals had jurisdiction on reversal to limit retrial to question of damages; Nichols v. Board of Commrs., 13 Wyo. 7, 76 Pac. 681, where final judgment not supported by pleadings or findings, it is reversible

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on error on record proper without bill of exceptions, though no exception taken to proceedings below.

Syl. 6 (VII, 1014). Abstractly correct instructions—Bill of exceptions.

Cited in Cassett v. Mitchell Coal & Coke Co., 150 Fed. 42, arguendo.

16 Wall. 390-402, 21 L. 361, BURKE v. SMITH.

Syl. 1 (VII, 1014). Directors cannot release stock subscriber.

Approved in Maryland Trust Co. v. National Mech. Bank, 102 Md. 627, 63 Atl. 77, holding trust company cannot purchase its own stock.

16 Wall. 414-436, 21 L. 457, UNITED STATES v. HUCKABEE.

Syl. 3 (VII, 1017). Contract under duress is void.

Approved in First Nat. Bank v. Sargent, 65 Neb. 601, 91 N. W. 597, 59 L. R. A. 296, where one conveyed land to bank as security for debt and he later, while broke, procured purchaser at good price, but bank refused to consent to sale unless bonus given, payment of bonus was under duress.

Syl. 4 (VII, 1018). Duress, sale when not made under.

Approved in Burnes v. Burnes, 132 Fed. 493, threat of surviving partner to administer estate as survivor unless corporation formed by heirs and stock divided, is not duress.

16 Wall. 446-452, 21 L. 367, RIBON v. RAILROAD COS.

Syl. 2 (VII, 1019). Equity—Want of necessary party.

Approved in United States v. Northern Pac. R. Co., 134 Fed. 720, 67 C. C. A. 269, suit by government in which annulment of contract between corporations is sought as necessary incident to other relief, cannot be tried on merits where court has no jurisdiction of one of corporations; Weidenfeld v. Northern Pac. Ry. Co., 129 Fed. 311, 63 C. C. A. 537, where stockholder sued to restrain corporation from retiring preferred stock and issuing common stock in its place, but thing primarily sought was destruction of ownership of majority of stock by securities company formed for that purpose, securities company is indispensable party; Lynch v. United States, 13 Okl. 158, 73 Pac. 1101, applying rule in suit to cancel land patent.

Syl. 3 (VII, 1020). Suit by minority stockholders—Parties.

See 97 Am. St. Rep. 47, note.

16 Wall. 471-479, 21 L. 303, MORGAN v. PARHAM.

Syl. 2 (VII, 1022). Enrollment of vessel in other port.

Approved in Olson v. San Francisco, 148 Cal. 83, 82 Pac. 851, vessel engaged in commerce on high seas is taxable in San Francisco, where her managing owner resided, though temporarily registered in Washington and has never been in California waters.

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Syl. 4 (VII, 1023). Tax on vessel registered in other state.

Approved in Ayer etc. Tie Co. v. Kentucky, 202 U. S. 422, 50 L. 1087, 26 Sup. Ct. 678, Comp. St. 1901, p. 2831, did not change situs of vessel for purpose of taxation; Union etc. Transit Co. v. Kentucky, 199 U. S. 205, 50 L. 154, 26 Sup. Ct. 36, Kentucky state tax on rolling stock of Kentucky railroad permanently located in other states denies it due process of law; Old Dominion S. S. Co. v. Virginia, 198 U. S. 306, 308, 49 L. 1062, 1063, 25 Sup. Ct. 686, vessels which, though engaged in interstate commerce, are employed in such commerce wholly within limits of a state, are taxable there though enrolled at port outside of state; Commonwealth v. Ayer etc. Tie Co., 117 Ky. 169, 77 S. W. 688 (reversed 202 U. S. 409), where Illinois corporation having principal office in Chicago operated vessel having painted on its stern "of Paducah, Kentucky," vessel was taxable in Paducah.

Distinguished in Foppiano v. Speed, 199 U. S. 520, 50 L. 292, 26 Sup. Ct. 138, state license tax on person selling liquor in state on board interstate boat is authorized by Comp. St. 1901, p. 3177.

16 Wall. 483-504, 21 L. 473, PLANTERS' BANK v. UNION BANK.

Syl. 7 (VII, 1027). Recovery of consideration on executed illegal contract.

Approved in Barnes v. Lynch, 9 Okl. 193, 59 Pac. 1009, following rule; Padilla v. Padilla, 11 N. M. 553, 70 Pac. 566, where brother recovered judgment on Indian depredation claim for property owned by himself and sister jointly, and agreed to give sister share when money received, sister may recover share; Overholt v. Burbridge, 28 Utah, 415, 79 Pac. 563, compelling bucket-shop to pay profits of sale on margin.

Distinguished in Erpelding v. McKearnan, 143 Mich. 413, 107 N. W. 108, in action by stockholders of corporation, whose property sold to another corporation, to recover from another stockholder, plaintiff's share of sum alleged to have been received by defendant under secret agreement with purchaser, evidence of illegal contract to which plaintiff and defendant were parties is admissible; Ruemmeli v. Cravens, 13 Okl. 354, 74 Pac. 912, where nonresident employed agent to sell liquor without procuring license and agent procures license in own name, principal cannot recover of agent moneys unaccounted for.

16 Wall. 522-535, 21 L. 369, AMERICAN STEAMBOAT CO. v. CHASE.

Syl. 6 (VII, 1031). Admiralty—Right of common-law remedy.

Approved in The Lotta, 150 Fed. 220, where there was only one claimant against vessel for wrongful death, owner could set up limited liability as defense in state court, and federal court could not restrain state action though extent of liability had been determined in federal court.

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Syl. 7 (VII, 1031). Maritime tort—Jurisdiction of suit in personam.

Approved in The Saginaw, 139 Fed. 908, in enforcing in court of admiralty right of action for wrongful death in collision on high seas, which is given by statute of vessel's home state, measure of damages is governed by law of such state.

16 Wall. 535-544, 21 L. 292, BEALL v. NEW MEXICO.

Syl. 1 (VII, 1032). Judgment against sureties on appeal bond.

Approved in Empire State etc. Co. v. Hanley, 136 Fed. 103, 69 C. C. A. 87, upholding Idaho Ann. Code 1901, § 3576, authorizing entry of judgment, on motion against sureties, by court from which appeal is taken.

Syl. 3 (VII, 1033). Administrator de bonis cannot sue predecessor.

See 108 Am. St. Rep. 427, note. Distinguished in Ellyson v. Lord, 124 Iowa, 132, 99 N. W. 585, in suit by administrator de bonis non and administrator and sureties, latter cannot defend on ground that funds for which administrator did not account were proceeds of unauthorized sale of decedent's realty.

16 Wall. 544-551, 21 L. 322, MITCHELL v. HAWLEY.

Syl. 1 (VII, 1034). Patents—Title—Purchase of right to use.

Approved in Bobbs-Merrill Co. v. Straus, 139 Fed. 187, purchaser of copyrighted books from publisher does not infringe by resale though books contain notice that no one authorized to sell at less price than fixed by publisher; Geo. Frost Co. v. Kora Co., 136 Fed. 488, purchaser of patented clasp in open market who detaches them from cord to which they are attached and attaches them to supporters to make which both are licensed, is not infringer.

Syl. 2 (VII, 1035). Patents—Restrictions in conveyance of use.

Approved in New York Phon. Co. v. Edison, 136 Fed. 613, where assignment of patent provided for assignment of improvements made within fifteen years and improvements made subsequently, and assignee authorized to extend license subject to original agreement, licensee not authorized to second extension in perpetuity.

16 Wall. 551-560, 21 L. 481, MARSHALL v. KNOX.

Syl. 2 (VII, 1036). Conflicting jurisdiction—Seizure by before bankruptcy.

Approved in First Nat. Bank v. Chicago Title etc. Co., 198 U. S. 289, 49 L. 1054, 25 Sup. Ct. 693, bankruptcy court after adjudging, on receiver's petition for directions respecting sale, that receiver was not in possession, cannot decree sale and determine rights of adverse claimants to proceeds; In re Reynolds, 133 Fed. 589, where after adjudication in bankruptcy property taken by mortgagee under chattel mortgage given more than four months prior to filing of petition, trustees suing in

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state court for value of property cannot institute summary proceedings in bankruptcy court.

Syl. 3 (VII, 1037). Jurisdiction of suits by bankruptcy assignee.

Approved in Security Warehousing Co. v. Hand, 143 Fed. 38, order on petition in bankruptcy court in nature of bill in equity to establish rights of petitioner to possession of property also claimed by bankrupt's trustee is reviewable by appeal.

16 Wall. 564-566, 21 L. 348, SPECHT v. HOWARD.

Syl. 1 (VII, 1038). Withdrawal of improper evidence.

Approved in State v. Emblem, 56 W. Va. 686, 49 S. E. 557, applying rule in prosecution for letting house to be used as house of ill-fame.

Syl. 2 (VII, 1038). Contemporaneous parol agreement to vary writing.

Approved in Earle v. Enos, 130 Fed. 470, parol agreement at time of discount of accommodation note that it would not look to maker for payment cannot be shown to defeat action on note.

16 Wall. 566-577, 21 L. 485, ST. PAUL WATER CO. v. WARE.

Syl. 3 (VII, 1040). City's liability for injury by contractor's obstruction.

Approved in Huntt v. McNamee, 141 Fed. 299, owner of lot who let work of excavating thereon to independent contractor is not liable for injuries caused by blasting by contractor unless he knew contractor was negligent or knew work was dangerous to neighbors; Thomas v. Harrington, 72 N. H. 48, 54 Atl. 287, 65 L. R. A. 742, abutting owner employing independent contractor to put in water-pipe from road is liable for injuries to one falling into unguarded and unlighted trench; Mullins v. Siegel-Cooper Co., 183 N. Y. 136, 75 N. E. 1115, abutting owner is liable for injuries caused pedestrian by sidewalk defectively constructed by contractor; Cameron Mill etc. Co. v. Anderson, 34 Tex. Civ. 108, 78 S. W. 10, holding one holding underground oil tank permit liable for injuries to one falling into unlighted or unguarded pit being made by his independent contractor.

Distinguished in City of Pawtucket v. Pawtucket Elec. Co., 27 R. I. 133, 61 Atl. 50, where railroad gave bond to save city harmless from acts of company, city could not sue in trespass to recover amount of judgment rendered against city for defect in street caused by company's negligence.

16 Wall. 577-584, 21 L. 489, WALBRUN v. BABBITT.

Syl. 1 (VII, 1041). Bankruptcy—Sale of stock of goods as fraud.

Approved in In re Knopf, 144 Fed. 248, 255, and In re Knopf, 146 Fed. 110, both following rule; Dokken v. Page, 147 Fed. 440, where bankrupt, when insolvent, sold to petitioner entire stock for less than

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half price, without invoice, sale was fraudulent as to creditors; In re Moody, 134 Fed. 632, where retail merchant sold entire stock to firm in exchange for farm taken in wife's name and also in consideration of payment of claim of bank of which members of firm were officers, transfer void as preference; In re Pease, 129 Fed. 448, 452, where trust company, through its attorney, made loan to merchant, with which he paid certain creditors including attorney's clients, loan being secured by mortgage on stock, and company next day sold out stock under mortgage, mortgage was void as to creditors.

16 Wall. 584-603, 21 L. 504, WAGER v. HALL.

Syl. 2 (VII, 1042). Bankrupt—When trader is insolvent.

Approved in Suffel v. McCartney Nat. Bank, 127 Wis. 214, 106 N. W. 839, preferential payment by one subsequently bankrupt is not recoverable by trustee merely because creditor knew of facts tending to produce doubt as to debtor's solvency.

Syl. 4 (VII, 1042). Bankruptcy—Inquiries as to solvency of mortgagor.

Approved in In re Knopf, 144 Fed. 255, sale of entire stock of retail merchant within four months of bankruptcy puts burden on purchaser to show good faith; In re Moody, 134 Fed. 631, where retail merchant sold entire stock to firm in exchange for farm taken in wife's name, and also in consideration of payment of claim of bank of which members of firm were officers, transfer was void as preference; Crandall v. Coats, 133 Fed. 969, holding creditors had notice of bankrupt's insolvency at time of conveyance; In re Pease, 129 Fed. 453, where trust company, through its attorney, made loan to merchant, with which he paid certain creditors, including attorney's clients, loan being secured by mortgage on stock, and next day company sold stock under mortgage, mortgage void as preference; Capital Nat. Bank v. Wilkerson, 36 Ind. App. 474, 75 N. E. 839, holding creditor had reasonable cause to believe that at time payments made preference was intended and being obtained.

Syl. 5 (VII, 1042). Bankruptcy—Preference—Transfer to one creditor.

Approved in Rex Buggy Co. v. Hearick, 132 Fed. 311, 65 C. C. A. 676, merchant hopelessly insolvent who, within four months of involuntary bankruptcy, pays certain creditors in full, but refuses others, commits act of bankruptcy.

16 Wall. 603-610, 21 L. 373, KANSAS PACIFIC RAILWAY CO. v. PRESCOTT.

Syl. 2 (VII, 1043). Taxation of lands prior to patent.

Approved in dissenting opinion in Delinquent Tax List v. Territory of Arizona, 4 Ariz. 189, 39 Pac. 328, majority holding taxpayer cannot

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object to tax on unconfirmed Mexican grant without first tendering taxes due on his other property included in assessment.

Syl. 3 (VII, 1044). Taxation of public lands prior to payment.

Approved in Topeka etc. Security Co. v. McPherson, 7 Okl. 341, 54 Pac. 492, lots in government townsite are not subject to sale for taxes levied while contest pending in Land Department and before deed issued by townsite trustees.

Distinguished in Territory v. Delinquent Taxpayers, 12 N. M. 67, 73 Pac. 623, lands embraced in perfect Mexican grant are taxable, though grant submitted to court of private land claims for confirmation, and patent not yet issued.

16 Wall. 610-644, 21 L. 430, CRAPO v. KELLY.

Syl. 3 (VII, 1046). Situs of vessels.

Approved in In re Clyde S. S. Co., 134 Fed. 99, suit is maintainable in admiralty for damages for wrongful death caused by collision on high seas where recovery for wrongful death is given by states to which vessels belong.

16 Wall. 644-667, 21 L. 328, ST. JOSEPH TOWNSHIP v. ROGERS.

Syl. 4 (VII, 1049). Assent of majority of voters.

Approved in Sharp v. George, 5 Ariz. 68, 46 Pac. 213, under Laws 18th Leg. Assem., Acts No. 32, relating to election to form union high school district, majority of those voting is sufficient.

16 Wall. 667-678, 21 L. 375, CHICAGO ETC. RAILROAD CO. v. COUNTY OF OTOE.

Syl. 1 (VII, 1050). Legislature may authorize county railroad aid.

Approved in Horton v. City of Newport, 27 R. I. 288, 61 Atl. 761, upholding power of legislature to provide for payment of city police out of local city funds.

16 Wall. 678-698, 21 L. 382, OLCOTT v. THE SUPERVISORS OF FON DU LAC CO.

Syl. 3 (VII, 1052). Binding effect of state decisions.

Approved in Board of Commrs. v. Tollman, 145 Fed. 763, where at time of issuance of aid bonds there was no state decision construing constitutional provision alleged to be violated, federal court puts own construction on constitution irrespective of state decision rendered after issuance of bonds; Phoenix Bridge Co. v. Castleberry, 131 Fed. 178, 65 C. C. A. 481, right of collateral attack on judgment is matter of general law, as to which state decisions are not binding.

Syl. 7 (VII, 1054). Railroad is public highway.

Approved in Donovan v. Pennsylvania Co., 199 U. S. 292, 50 L. 199, 26 Sup. Ct. 91, railroad having arrangement with transfer company

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for furnishing at depot all vehicles necessary for accommodation of its passengers may exclude other cabmen from its depot; McLucas v. St. Joseph etc. Ry. Co., 67 Neb. 610, 93 N. W. 929, railroad operated in state is public highway; dissenting opinion in Western Union Tel. Co. v. Pennsylvania R. R. Co., 195 U. S. 577, 49 L. 326, 25 Sup. Ct. 133, majority holding under Rev. St., §§ 5263 et seq., telegraph companies not granted right to occupy railroad rights of way without consent of railroad.

XVII WALLACE.

17 Wall. 1-9, 21 L. 587, CORDOVA v. HOOD.

Syl. 4 (VIII, 7). Waiver of vendor's lien by taking note.

Approved in Griffin v. Smith, 143 Fed. 866, following rule.

Syl. 6 (VIII, 8). Means of knowledge equivalent to actual knowledge.

Approved in National Cash Register Co. v. New Columbus Watch Co., 129 Fed. 116, 63 C. C. A. 616, where attorney for inventor, being requested to ascertain whether client would sell pending application for patent, bought it for himself on quiet and sold it to complainant for big gain, complainant not affected by his knowledge of equitable interest of others; Pierce v. Vansell, 35 Ind. App. 536, 74 N. E. 558, applying rule where administrator conveyed tract of thirty-nine acres under description which by mutual mistake was supposed to convey twelve acres, and defendant acquired same as part of larger tract which was conveyed by antenuptial contract.

17 Wall. 19, 21 L. 611, RYAN v. KOCH.

Syl. 1 (VIII, 11). Judgment affirmed in absence of assignment of errors.

Approved in Fitch v. Richardson, 147 Fed. 196, following rule.

17 Wall. 19-29, 21 L. 554, NATIONAL BANK OF THE METROPOLIS v. KENNEDY.

Syl. 1 (VIII, 11). National bank receiver's suit in own name.

Approved in Fish v. Olin, 76 Vt. 124, 56 Atl. 533, national bank receiver may sue at law in own name in state court.

Syl. 10 (VIII, 12). Evidence not included in bill of exceptions.

Approved in The Wyandotte, 145 Fed. 326, applying rule in admiralty.

Syl. 12 (VIII, 13). Belief of one party does not control.

Approved in Barataria Canning Co. v. Ott, 84 Miss. 757, 37 So. 125, in construing reservation in deed, intention of parties cannot be shown.

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17 Wall. 32-44, 21 L. 566, BRANSON v. WIRTH.

Syl. 5 (VIII, 14). Estoppel against estoppel.

Approved in Tappan v. Huntington, 97 Colo. 35, 106 N. W. 99, conveyance by subsequent grantee subject to encumbrances makes mortgage enforceable by original grantor who has acquired mortgage; United States Fid. etc. Co. v. Ettenheimer, 70 Neb. 151, 99 N. W. 653, one who executes bond under circumstances which estop him from pleading want of consideration cannot defend action on bond on ground that plaintiff is estopped to assert consideration.

Syl. 6 (VIII, 14). Estoppel by acts inducing reliance.

Approved in Wiser v. Lawler, 7 Ariz. 185, 62 Pac. 701, holding vendor of mine not estopped to assert title thereto where they had given option to party who assigned to corporation which defaulted in payment.

Syl. 9 (VIII, 14). Recitals in private acts as evidence.

Approved in Davis v. Moyles, 76 Vt. 37, 56 Atl. 178, petitions to legislature for grant of lands reciting lands confiscated from petitioner's father and private acts granting land and also reciting confiscation, are not evidence of confiscation, so as to show title in state at time of grant as against defendant in suit for trespass by one claiming through grantee.

17 Wall. 44-64, 21 L. 570, OLCOTT v. BYNUM.

Syl. 9 (VIII, 17). Power of mortgagee to sell—Sale of part.

Approved in Croze v. St. Mary's Canal etc. Co., 143 Mich. 517, 107 N. W. 93, where mortgaged logs were mingled with other logs so that sorting at place of seizure impossible, mortgagee not guilty of conversion in removing them to lake for sorting.

17 Wall. 64-67, 21 L. 543, EX PARTE WARMOUTH.

Syl. 2 (VIII, 18). Prohibition by supreme to circuit court.

See 111 Am. St. Rep. 934, 936, note.

17 Wall. 67-75, 21 L. 564, MASON v. UNITED STATES.

Syl. 7 (VIII, 19). Acceptance of lesser amount on government claim.

Approved in Burnes v. Burnes, 132 Fed. 493, threat of surviving partner to administer estate as survivor if corporation not formed and stock allotted to heirs is not duress.

17 Wall. 78-81, 21 L. 558, HARWOOD v. CINCINNATI ETC. RAILROAD CO.

Syl. 2 (VIII, 20). Laches not dependent on statute of limitations.

Approved in Patterson v. Hewitt, 11 N. M. 20, 66 Pac. 557, 55 L. R. A. 658, holding claimants of conflicting mining claims who aban-

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doned locations and made new locations in name of one of parties barred by laches.

Syl. 3 (VIII, 21). Foreclosure not set aside after five years.

Approved in Cole v. Birmingham Union Ry. Co., 143 Ala. 434, 39 So. 405, stockholder's suit to set aside sale of corporation's property for shares of stock in purchasing company is barred ten years after sale, property meanwhile having been sold to third party, who mortgaged it; Patterson v. Hewitt, 11 N. M. 33, 66 Pac. 561, 55 L. R. A. 658, holding claimants of conflicting mining claims who abandoned locations and made new location in name of one of parties barred by laches.

17 Wall. 82-96, 21 L. 613, AVERILL v. SMITH.

Syl. 6 (VIII, 22). Probable cause—Trespass against officer.

Approved in Agnew v. Haymes, 141 Fed. 637, 638, in action against internal revenue officer for wrongful seizure of property returned to claimant intact, proof of probable cause is good defense under Rev. St., § 989, though court in rendering judgment in proceeding for forfeiture failed to make certificate of probable cause provided for by Rev. St., § 970.

Distinguished in Haymes v. Brown, 132 Fed. 529, under Rev. St., § 989, probable cause is no defense to action against revenue officer for wrongful seizure.

Syl. 7 (VIII, 22). Trespass by officer—What is probable cause.

Approved in United States v. 83 Sacks of Wool, 147 Fed. 748, on judgment for claimant of property seized by customs officers, certificate of probable cause should be entered where it is shown that officers acted in good faith and on reasonable ground of suspicion.

17 Wall. 96-109, 21 L. 611, BAILEY v. HANNIBAL ETC. RAILROAD CO.

Syl. 4 (VIII, 23). Contracts—Different writings read together.

Approved in Lillard v. Kentucky Dist. etc. Co., 134 Fed. 180, 67 C. C. A. 74, where distilleries company agreed to sell slop and deliver it to feeding lot, and contemporaneous contract provided for lease of land by purchaser to company to be used as feeding lot, lessor to have refusal of slop at market price, two contracts were separate.

17 Wall. 109-123, 21 L. 618, OULTON v. SAVINGS INSTITUTION.

Syl. 3 (VIII, 24). Kinds of banks.

Approved in State v. German Sav. Bk., 103 Md. 204, 63 Atl. 484, in action for collection of franchise tax on savings bank, allegation that defendant was ordinary state bank, with paid-up capital, is not inconsistent with allegation that it is not savings bank; Hamilton Nat. Bank v. American Loan & Trust Co., 66 Neb. 72, 92 N. W. 191,

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corporation authorized to negotiate loans, buy and sell notes, mortgages and bonds, borrow money and receive deposits and executo trusts, is bank.

Syl. 5 (VIII, 24). Taxes—Savings banks doing other business.

Approved in Western Investment etc. Co. v. Murray, 6 Ariz. 223, 56 Pac. 731, where corporation received money and loaned it in names of depositors, and collected rents and interest on loans, which were subject to check by owners, for which it charged commission, it is a bank.

17 Wall. 153-167, 21 L. 622, HOMESTEAD CO. v. VALLEY R. R.

Syl. 4 (VIII, 28). Recovery of taxes paid by claimant of land.

Approved in Bryant v. Nelson-Frey Co., 94 Minn. 308, 102 N. W. 860, voluntary payment for number of years of taxes on vacant land of another by stranger to title, under mistaken belief that he had tax title, creates no obligation on part of owner to repay.

Distinguished in Armijo v. Neher, 11 N. M. 656, 72 Pac. 14, in suit for accounting between cotenants, possessor erroneously claiming entire tract is entitled to credits for taxes paid, where he acted in good faith.

17 Wall. 168-182, 21 L. 538, UNITED STATES v. COOK.

Syl. 3 (VIII, 30). Indictment under statute containing exception.

Approved in United States v. Sheridan-Kirk etc. Co., 149 Fed. 813, in prosecution for violation of eight-hour law, burden of showing justification is on defendant; United States v. Stone, 135 Fed. 395, applying rule to indictment based on Rev. St., § 5440, charging conspiracy to defraud United States by violating subsequent statute; Johnson v. People, 33 Colo. 231, 108 Am. St. Rep. 85, 80 Pac. 135, applying rule to indictment under Mills' Ann. St. Rev. Supp., § 1209, for murder committed in procuring miscarriage; Smith v. Jones, 16 S. D. 343, 92 N. W. 1085, upholding sufficiency of complainant for malicious prosecution, though it showed on face that offense has been outlawed and did not plead exceptions provided in statute; dissenting opinion in People v. Ebelt, 180 N. Y. 481, 73 N. E. 238, majority holding written challenge to jury panel that special jury act violated Const., art. 3, § 18, but failing to allege that bill not reported to legislature by revision commissioners as required by § 23, is insufficient; United States v. Praeger, 149 Fed. 485, arguendo.

Syl 5 (VIII, 31). Every ingredient of offense must be alleged.

Approved in United States v. Allen, 150 Fed. 154, indictment under Rev. St., § 4046, must charge that money order funds embezzled came into defendant's possession by virtue of his employment; United States v. Green, 136 Fed. 641, 643, upholding sufficiency of indictment under Rev. St., § 5440, for conspiracy to defraud government; Niece v. Territory, 9 Okl. 539, 60 Pac. 301, indictment for bigamy

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under Stat. 1893, § 4551, must negative fact that alleged bigamous wife was person other than wife of defendant at time of second wife; Parker v. Territory, 9 Okl. 114, 59 Pac. 10, indictment for rape must allege that female was not wife of accused; Young v. Territory, 8 Okl. 528, 58 Pac. 725, indictment for assault to rape must allege that female was not wife of accused.

Syl. 7 (VIII, 32). Indictment—Statute containing exception.

Approved in Tomlinson v. Bainaka, 163 Ind. 114, 70 N. E. 156, complaint in action to enforce lien for building partition fence is sufficient, though it did not allege lands were inclosed to retain stock; State v. Snyder, 182 Mo. 498, 82 S. W. 22, 66 L. R. A. 490, holding indictment seeking to overcome limitations must allege that defendant was not inhabitant of state subsequent to offense; Wilkerson v. State, 44 Tex. Cr. 458, 72 S. W. 852, indictment under Pen. Code, art. 379, charging gaming at hotel is sufficient, though it does not negative fact that game was in private residence.

Syl. 11 (VIII, 33). Defense of limitations raisable by demurrer.

See 112 Am. St. Rep. 123, note.

Syl. 13 (VIII, 33). Indictment—Demurrer raising defense of limitations.

Approved in United States v. Brace, 143 Fed. 704, demurrer cannot raise defense of plea of statute of limitations to indictment; Ex parte Townsend, 133 Fed. 75, judgment of court-martial confirmed according to articles of war is not reviewable on habeas corpus on ground that prosecution was barred by limitation.

17 Wall. 191-206, 21 L. 606, LAPEYRE v. UNITED STATES.

Syl. 3 (VIII, 35). When presidential proclamation takes effect.

Approved in Railroad Commission of Louisiana v. Kansas City etc. Ry. Co., 111 La. 140, 35 So. 490, determining that railroad had constructive notice of order of railroad commission ordering removal of spur track.

17 Wall. 207-210, 21 L. 553, ALLEN v. UNITED STATES.

Syl. 4 (VIII, 35). Setoff on claim ex contractu.

Approved in Tidewater Quarry Co. v. Scott, 105 Va. 164, 52 S. E. 837, defendant in assumpsit may set off claim for conversion of his property by plaintiff.

17 Wall. 211-253, 21 L. 523, HOLDEN v. JOY.

Syl. 12 (VIII, 37). Conditions subsequent—Who claims breach.

Approved in Jordan v. Goldman, 1 Okl. 440, 441, 34 Pac. 376, under Cherokee treaties, Cherokee nation settlement and operation of stone quarries on outlet was unwarranted.

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17 Wall. 253-294, 21 L. 576, TYLER v. MAGUIRE.

Syl. 4 (VIII, 38). Matters considered on second appeal.

Approved in United States v. Denver etc. R. R. Co., 11 N. M. 154, 66 Pac. 552, applying rule to question as to right to cut timber on government lands adjacent to railroad right of way.

17 Wall. 322-335, 21 L. 597, UNITED STATES v. BALTIMORE ETC. RAILROAD CO.

Syl. 4 (VIII, 41). Federal taxation of state agencies.

Distinguished in South Carolina v. United States, 199 U. S. 460, 50 L. 269, 26 Sup. Ct. 110, government may exact revenue tax from dispensing agent of state which has taken charge of liquor business.

Syl. 7 (VIII, 42). Public and private corporations distinguished.

Approved in Worcester v. Worcester etc. St. Ry. Co., 196 U. S. 549, 49 L. 595, 25 Sup. Ct. 327, city cannot invoke protection of contract clause of constitution against abrogation, by statute, of contract between city and street railway as to paving of streets; Kittel v. Trustees etc. Imp. Fund, 139 Fed. 953, under Florida improvement fund act, trustees could confirm railroad land grant passed by legislature in strict conformity with improvement act. See 97 Am. St. Rep. 349, note.

Distinguished in Lexington v. Thompson, 113 Ky. 545, 101 Am. St. Rep. 361, 68 S. W. 478, 57 L. R. A. 775, holding void act of 1900, attempting to fix compensation of members of city fire department.

Syl. 8 (VIII, 43). Federal tax on municipal revenues.

Approved in Mosely v. State, 115 Tenn. 59, 60, 86 S. W. 716, state cannot tax interest on government bonds on its being paid into hands of bondholder; dissenting opinion in South Carolina v. United States, 199 U. S. 466, 467, 468, 471, 50 L. 272, 274, 26 Sup. Ct. 110, majority holding government may exact revenue tax from dispensing agent of state which has taken charge of liquor business.

Distinguished in South Carolina v. United States, 199 U. S. 453, 50 L. 266, 26 Sup. Ct. 110, government may exact revenue tax from dispensing agent of state which has taken charge of liquor business.

17 Wall. 336-351, 21 L. 602, HUME v. BEALE'S EXECUTRIX.

Syl. 4 (VIII, 45). Excuse for cestui's laches.

Approved in Patterson v. Hewitt, 11 N. M. 28, 66 Pac. 560, 55 L. R. A. 658, evidence of poverty of complainant is no excuse for long delay in assertion of rights.

17 Wall. 351-354, 21 L. 542, ALLEN v. MASSEY.

Syl. 3 (VIII, 46). Following state statutory construction.

Approved in In re Wood, 147 Fed. 878, under Wisconsin decisions homestead owned by bankrupt, though purchased while insolvent from

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proceeds of nonexempt property, is exempt; York v. Washburn, 129 Fed. 567, 64 C. C. A. 132, federal courts follow state courts in determining whether oral contract for lease of realty for more than one year not conforming to statute of frauds is void or voidable; dissenting opinion in James v. Gray, 131 Fed. 414, 65 C. C. A. 385, majority holding loan made by wife to husband from separate estate is debt provable against his bankrupt estate, irrespective of its enforceability under state laws.

17 Wall. 357-384, 21 L. 627, NEW YORK CENTRAL RAILROAD CO. v. LOCKWOOD.

Syl. 1 (VIII, 48). Drover riding on pass is passenger.

Approved in Weaver v. Ann Arbor R. R. Co., 139 Mich. 600, 601, 602, 102 N. W. 1041, 1042, following rule; McNeill v. Durham etc. Ry. Co., 135 N. C. 699, 47 S. E. 767, 67 L. R. A. 227, holding railroad liable for injuries to one riding on pass, though pass was void; Nickles v. Seaboard etc. Ry., 74 S. C. 133, 135, 54 S. E. 265, 266, where husband agrees to go to certain point as witness for railroad on condition that it furnish transportation for his wife, stipulation on pass relieving company from negligence is no defense to action for death of wife; Feldschneider v. Chicago, Milwaukee etc., 122 Wis. 432, 99 N. W. 1037, where contract of stock carriage provided that shipper might accompany stock, clause that carrier not liable for personal injuries in excess of $500 is void.

Distinguished in Yarrington v. Delaware etc. Co., 143 Fed. 567, under Penn. P. L. 58, railway mail clerk is not passenger.

Syl. 3 (VIII, 49). Limitation of carrier's liability.

Approved in Central etc. Ry. Co. v. Hall, 124 Ga. 325, 110 Am. St. Rep. 172; 52 S. E. 681, 4 L. R. A. (N. S.) 898, upholding contract limiting liability of carrier of livestock to injuries caused by gross negligence.

Syl. 5 (VIII, 50). Co-ordinate jurisdiction on commercial law.

Approved in Spinks v. Mutual etc. Life Assn., 137 Fed. 171, applying rule in determining validity of provision of insurance policy that no action shall be brought after one year from insured's death.

Distinguished in Yarrington v. Delaware etc. Co., 143 Fed. 569, under Penn. P. L. 58, railway mail clerk is not passenger.

Syl. 9 (VIII, 52). Common carrier becoming private carrier.

Distinguished in Texas etc. Ry. Co. v. Fenwick, 34 Tex. Civ. 226, 78 S. W. 551, railroad liable for injuries to newsboy employed by another to sell papers on train though he signed antecedent release.

Syl. 10 (VIII, 53). Care required of carriers of passengers.

Approved in Memphis News Pub. Co. v. Southern Ry. Co., 110 Tenn. 703, 63 L. R. A. 150, 75 S. W. 945, where railroad contracted with

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newspaper to run special early train carrying only its newspapers, paper guaranteeing certain revenue from train, and train became one of scheduled trains, railroad could not refuse other papers.

Syl. 12 (VIII, 55). Gross and ordinary negligence.

Approved in Evansville etc. R. R. Co. v. McKinney, 34 Ind. App. 408, 73 N. E. 150, where complaint alleged agreement for round-trip shipment of racehorses, and that on return carrier refused to ship unless contract limiting liability to $100 for each horse signed, and horses injured by carrier's negligence, cause of action is stated; Nashville etc. Ry. Co. v. Stone, 112 Tenn. 377, 105 Am. St. Rep. 955, 79 S. W. 1038, stipulation limiting liability for loss of hogs shipped to $5 per head is void where real value was treble that sum.

Syl. 13 (VIII, 55). Ordinary, slight and gross negligence distinguished.

Approved in Raymond v. Portland R. R. Co., 100 Me. 534, 62 Atl. 604, construing instruction as to care required of conductor of street-car in permitting passenger to alight from car.

Syl. 14 (VIII, 56). Negligence defined.

Approved in Mannon v. Camden etc. Ry. Co., 56 W. Va. 556, 49 S. E. 451, applying rule where street-car passenger injured.

Syl. 16 (VIII, 56). When carrier can stipulate against negligence.

Approved in Kelly v. Malott, 135 Fed. 76, 67 C. C. A. 548, characterization of defendant's negligence as "gross" in declaration does not change effect of allegation from what it would have been if term "negligence" alone used; Chicago etc. Ry. Co. v. Hamler, 215 Ill. 540, 106 Am. St. Rep. 187, 74 N. E. 710, where sleeping-car porter injured by blowing up of locomotive of his train, contract releasing railroad from liability is complete defense, though negligence was gross; Evansville etc. R. R. Co. v. McKinney, 34 Ind. App. 409, 73 N. E. 150, complaint alleging agreement for round-trip shipment of racehorses, and that carrier refused to ship on return unless contract limiting liability to $100 for each horse signed, value being fixed by carrier, states cause of action.

Syl. 17 (VIII, 59). Carrier cannot stipulate against negligence.

Approved in Cau v. Texas etc. Ry. Co., 194 U. S. 431, 48 L. 1057, 24 Sup. Ct. 663, exemption of carrier from liability for fire is valid though opportunity to ship under common-law liability not presented; Arthur v. Texas etc. Ry. Co., 139 Fed. 130, where shipper accepted bill of lading containing fire exemption clause without request for rate under common-law liability, carrier not liable for loss by fire; Pennsylvania R. Co. v. Burr, 130 Fed. 850, 65 C. C. A. 331, where bill of lading limits carrier's liability to value of goods at time and place of shipment, and gives carrier benefit of insurance effected by shipper, carrier cannot claim insurance covering current value at destination; Wilson v. Atlantic C. L. R. Co., 129 Fed. 779, 780, where car-

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rier agreed to haul circus cars, loading of which was to be in charge of circus men, for reduced rate, stipulation releasing carrier from liability for negligence of its employees is valid.

Syl. 18 (VIII, 64). Carrier's liability to drover—Contract exemption.

Approved in Paul v. Pennsylvania R. R. Co., 70 N. J. L. 445, 57 Atl. 140, following rule; The Oregon, 133 Fed. 630, 68 C. C. A. 603, applying rule to stipulation of ticket exempting carrier from liability for own or agent's negligence, provided it has used due diligence to make vessel seaworthy; Johnston v. Fargo, 184 N. Y. 384, 77 N. E. 390, agreement between express company and an employee relieving company from liability for injuries caused through its negligence is void; McNeill v. Durham etc. Ry. Co., 135 N. C. 702, 703, 704, 47 S. E. 772, 773, 67 L. R. A. 227, holding railroad liable for injuries to one riding on pass though pass was void; Sprigg v. Rutland R. R. Co., 77 Vt. 356, 357, 358, 60 Atl. 146, 147, applying rule to contract exempting carrier from liability for injuries to caretaker of cattle; Chesapeake etc. Ry. Co. v. Beasley, 104 Va. 792, 3 L. R. A. (N. S.) 183, 52 S. E. 567, under Code 1887, § 1296, contract limiting carrier's liability is void; Shannon v. Chesapeake etc. Ry. Co., 104 Va. 649, 52 S. E. 377, holding railroad liable for injuries to express messenger; Bosley v. Baltimore etc. R. R. Co., 54 W. Va. 579, 46 S. E. 619, 66 L. R. A. 871, contract limiting liability of carrier of stock to amount expended by owner for food and water in event of delay through carrier's negligence does not exempt carrier from liability for damage caused by its negligence; Cherry v. Chicago etc. R. R. Co., 191 Mo. 517, 109 Am. St. Rep. 830, 2 L. R. A. (N. S.) 695, 90 S. W. 389, arguendo.

17 Wall. 384-398, 21 L. 644, STITT v. HUIDEKOPERS.

Syl. 3 (VIII, 65). Affirmative witness preferred to negative.

Approved in Rich v. Chicago etc. Ry. Co., 149 Fed. 83, in action for death at crossing where engineer and fireman testified bell was ringing, testimony of others that they did not hear bell does not warrant finding of negligence; The Fin MacCool, 147 Fed. 127, applying rule where master and crew of sunken dredge testified to placing lights thereon and that they were burning immediately preceding collision; Baltimore etc. R. Co. v. Baldwin, 144 Fed. 56, where foreman of track crew and others testified to warning of approach of engine, testimony of others that they did not hear warning creates no conflict; Chicago etc. Ry. Co. v. Andrews, 130 Fed. 70, 64 C. C. A. 399, applying rule where in action for injuries at railroad crossing many witnesses testified to hearing signals and saw train approaching; State v. Murray, 139 N. C. 548, 51 S. E. 776, upholding instruction defining positive and negative testimony in prosecution for murder.

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17 Wall. 398-405, 21 L. 649, CONWAY v. STANNARD.

Syl. 2 (VIII, 65). Notice of sale of perishable property.

Cited in Daniels v. Homer, 139 N. C. 230, 51 S. E. 996, 3 L. R. A. (N. S.) 997, arguendo.

17 Wall. 409-411, 21 L. 665, REED v. GARDNER.

Syl. 1 (VIII, 66). Review of matters in bill of exceptions.

Approved in Newport etc. Ry. & Elec. Co. v. Yount, 136 Fed. 590, 69 C. C. A. 363, assignment of error based on giving and refusal of instructions not considered on appeal, unless bill of exceptions contains evidence pertinent to issues.

17 Wall. 417-424, 21 L. 642, MOORE v. HUNTINGTON.

Syl. 4 (VIII, 68). Judgment against defendant and appeal sureties.

Approved in Empire State etc. Co. v. Hanley, 136 Fed. 103, 69 C. C. A. 87, where, after affirmance on appeal, appellee filed in trial court motion to proceed, containing notice to sureties on supersedeas bond that he would apply for summary decree on bond, court could render summary judgment against surety.

17 Wall. 425-437, 21 L. 650, STATE v. STOLL.

Syl. 1 (VIII, 68). Repeal by later law.

Approved in Guthrie v. Sparks, 131 Fed. 449, 65 C. C. A. 427, Ky. St. 1894, § 1882, empowering county fiscal courts to levy county taxes, but excepting power to levy tax for railway aid bonds, is not impliedly repealed as to exception by § 1839, relating to ad valorem taxes; Giles v. Dennison, 15 Okl. 63, 78 Pac. 177, Laws 1897, p. 256, § 2, relating to construction of courthouse, is not repealed by Laws 1903, c. 11, p. 146; Carpenter v. Russell, 13 Okl. 283, 73 Pac. 932, Stat. 1893, c. 18, art. 13, relating to appeals, is not inconsistent with Act of 1893 extending jurisdiction of probate court and providing for appeals therefrom; Tootle v. Kent, 12 Okl. 700, 73 Pac. 318, Code Civ. Proc., § 56, relating to change of venue, does not conflict with 28 Stat. 21, and is valid; Buchanan v. State Treasurer, 68 S. C. 415, 47 S. E. 684, construing salary reduction act of 1893, and general appropriation act passed on following day.

Syl. 3 (VIII, 70). Special charter unaffected by general law.

Approved in Christie-Street Com. Co. v. United States, 136 Fed. 333, 69 C. C. A. 464, limitation of two years for commencement of actions to recover back internal revenue taxes illegally exacted prescribed by Rev. St., § 3227, is not repealed by Comp. St. 1901, p. 752; Bealmear v. Hutchins, 134 Fed. 262, under Rev. St. N. C. 1837, c. 42, § 1, relating to entry of Cherokee lands, burden is on entryman to show on face of grant itself that land was at time vacant and unsurveyed.

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17 Wall. 445-453, 21 L. 675, WASHINGTON ETC. RAILROAD CO. v BROWN.

Syl. 2 (VIII, 72). Process—Presumption as to continuance in official capacity.

Approved in dissenting opinion in Thum v. Pyke, 8 Idaho, 30, 66 Pac. 163, majority holding judgment against corporation is void where service of summons made on one not secretary at date of service.

Syl. 4 (VIII, 72). Railroads—Escape of legal duties by lease.

Approved in Muntz v. Algiers etc. Ry. Co., 111 La. 428, 100 Am. St. Rep. 495, 35 So. 627, 64 L. R. A. 222, railroad is liable for injuries caused by its negligent operation of cars upon road operated by its lessee.

(VIII, 72.) Miscellaneous. Cited in Chicago etc. R. R. Co. v. Newell, 198 U. S. 579, 49 L. 1171, 25 Sup. Ct. 801.

17 Wall. 453-460, 21 L. 700, ADAMS v. BURKE.

Syl. 2 (VIII, 75). Patents—License to sell or use.

Approved in Hartman v. Park & Sons Co., 145 Fed. 364, upholding contract between maker of proprietary medicine and wholesalers binding latter to sell at fixed price and to retailers designated by maker only; Bullock etc. Mfg. Co. v. Westinghouse etc. Mfg. Co., 129 Fed. 109, 63 C. C. A. 607, where defendant restrained from making or selling patented article, his making and selling single element of combination for use in foreign country for use with other elements of patent is not contempt.

Syl. 3 (VIII, 75). Patents—Sale of right in certain district.

Cited in Rubber Tire Wheel Co. v. Milwaukee Rubber etc. Co., 142 Fed. 536, arguendo.

17 Wall. 460-463, 21 L. 679, PHILP v. NOCK.

Syl. 1 (VIII, 76). Measure of damages for patent infringement.

Distinguished in Brown v. Lanyon, 148 Fed. 839, action at law is not maintainable for sole purpose of recovering profits of infringer of patent.

Syl. 2 (VIII, 76). Damages for infringement of part.

Approved in Westinghouse v. New York Air Brake Co., 140 Fed. 547, following rule.

17 Wall. 463-473, 21 L. 517, CARLTON v. BOKEE.

Syl. 3 (VIII, 77). Patents—All embracing claims.

Approved in Queen v. Friedlander, 149 Fed. 777, holding void Sayer patent No. 594,036, claim 1, for improvement in vacuum tubes.

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17 Wall. 473-488, 21 L. 723, WILSON v. CITY BANK.

Syl. 1 (VIII, 78). Objects of bankruptcy.

Approved in In re Armstrong, 145 Fed. 208, holding mortgages given while actually insolvent, but where debtor did not so believe, not to be preferences.

Syl. 5 (VIII, 78). Bankruptcy—Transfers void as fraudulent preference.

Approved in Western Tie etc. Co. v. Brown, 196 U. S. 509, 49 L. 574, 25 Sup. Ct. 339, sum retained by creditor with knowledge of debtor's insolvency, within four months of bankruptcy, which sum was due bankrupt under agreement by which creditor deducted from employee's wages sums due bankrupt, is not preference; Hardy v. Gray, 144 Fed. 925, 926, holding payment by insolvent to creditor by return of goods to be preference.

Syl. 6 (VIII, 78). Insolvent not compelled to petition for adjudication.

Approved in Richmond etc. Iron Co. v. Allen, 148 Fed. 661, insolvent corporation does not give preference by permitting its property on leased premises to be sold for past rent.

Syl. 10 (VIII, 80). Bankruptcy—Passive nonresistance not preference.

Approved in Johnson v. Anderson, 70 Neb. 243, 97 N. W. 342, holding attachment and judgment thereon not preference.

17 Wall. 496-507, 21 L. 728, UNITED STATES v. ISHAM.

Syl. 2 (VIII, 84). Statutory construction—Punctuation.

Approved in Crawford v. Burke, 195 U. S. 192, 49 L. 153, 25 Sup. Ct. 9, only debts created by fraud of bankrupt while he was acting as officer or in fiduciary capacity are excepted from operation of discharge in bankruptcy by Bankr. Act, § 17, subd. 4.

Syl. 5 (VIII, 84). Taxation—Doubts construed in favor of exemption.

Approved in State v. Western Union Tel. Co., 96 Minn. 18, 104 N. W. 570, under Laws 1891, p. 70, c. 8, as amended in 1901, tangible and intaxable property of telegraph companies are taxable.

17 Wall. 508-514, 21 L. 705, NORTHWESTERN PACKET CO. v. McCUE.

Syl. 3 (VIII, 85). When relation of master and servant ceases.

Approved in Arkadelphia Lumber Co. v. Smith, 78 Ark. 510, 95 S. W. 801, where lumber company furnished employees with handcar to go home at end of day's labor, employees still in company's service while traveling over road to homes.

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Distinguished in O'Neil v. Pittsburg etc. R. Co., 130 Fed. 208, flagman crossing tracks after work ended cannot recover for injury caused by negligence of train crew.

17 Wall. 521-532, 21 L. 687, BOARD OF PUBLIC WORKS v. COLUMBIA COLLEGE.

Syl. 3 (VIII, 87). Judgments—Full faith and credit.

Approved in In re Box's Will, 127 Wis. 270, 106 N. W. 1065, on proceedings to probate will which had been probated in Illinois, where copy of record not authenticated is required by statute, county court had no jurisdiction to admit will to probate.

17 Wall. 532-545, 21 L. 707, REA v. MISSOURI.

Syl. 3 (VIII, 90). Witnesses—Scope of cross-examination.

Approved in dissenting opinion in Resurrection Gold Min. Co. v. Fortune Gold Min. Co., 129 Fed. 682, 64 C. C. A. 180, majority holding cross-examination of witness should be limited to subjects of his direct examination.

17 Wall. 545-553, 21 L. 685, ELDRED v. BANK.

Syl. 1 (VIII, 91). Plea is appearance.

Approved in Groel v. United Elec. Co., 68 N. J. Eq. 251, 59 Atl. 641, under Rev. 1902, P. L., p. 511, plea by foreign corporation in suit in which personal decree sought, reciting that it appears by its officers for sole purpose of objecting to jurisdiction, is sufficient.

17 Wall. 553-559, 21 L. 739, UNION PACIFIC RAILROAD CO. v. FORT.

Syl. 1 (VIII, 92). Theory of fellow-servant rule.

Approved in Bering Mfg. Co. v. Femelat, 35 Tex. Civ. 43, 79 S. W. 873, instruction that employer cannot escape liability for injury to servant caused by wrongful act of foreman is erroneous.

Syl. 2 (VIII, 93). Presumption of servant's assumption of risks.

Distinguished in McMillan v. Grand Trunk Ry. Co., 130 Fed. 829, 65 C. C. A. 165, where boy of seventeen, who had gone into railroad yards with experienced servant to be instructed in car-coupling, was killed, proof that servant who was with deceased was also young does not show defendant's negligence.

Syl. 4 (VIII, 95). Ordering minor to do perilous work is negligence.

Distinguished in Texas etc. Coal Co. v. Manning, 34 Tex. Civ. 325, 78 S. W. 547, where neither express authority to one employee to direct another, nor knowledge of such assumed authority brought home to employer, no presumption of authority arises.

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Syl. 5 (VIII, 96). Implied agreement not endanger servant.

Approved in Vohs v. Shorthill, 130 Iowa, 541, 107 N. W. 418, holding it was duty of master to warn inexperienced servant of danger from flying splinters in cutting steel rails.

17 Wall. 560-570, 21 L. 710, CHICAGO & N. W. RAILROAD CO. v. FULLER.

Syl. 1 (VIII, 97). Commerce—Requiring posting of railroad rates.

Approved in Louisville v. Wehmhoff, 116 Ky. 830, 76 S. W. 881, under Ky. St. 1899, §§ 2742, 2782, 2783, council may pass ordinance prohibiting poolrooms; Walker v. Southern Ry. Co., 137 N. C. 168, 49 S. E. 86, upholding Acts 1903, p. 999, c. 590, imposing penalty on railroad failing to transport interstate freight within four days after its receipt; Atlantic Coast Line Ry. Co. v. Commonwealth, 102 Va. 617, 46 S. E. 916, upholding corporation commission's rules regarding storage, demurrage, car service and car detention charges; Hagan v. City of Richmond, 104 Va. 732, 3 L. R. A. (N. S.) 1120, 52 S. E. 389, Comp. St. 1901, p. 3546, authorizing Secretary of War to remove obstructions from navigable waters, does not prohibit states or cities from removing obstructions where secretary does not act.

Syl. 3 (VIII, 98). Commerce embraces what.

Approved in dissenting opinion in Northern Securities Co. v. United States, 193 U. S. 392, 48 L. 723, 24 Sup. Ct. 436, majority upholding anti-trust act of 1890.

Syl. 4 (VIII, 98). State regulation of commerce in absence of congressional.

Approved in Arkansas etc. Ry. Co. v. German Nat. Bank, 77 Ark. 490, 92 S. W. 525, upholding Kirby's Digest, §§ 530, 531, prohibiting delivery of goods except on surrender of bill of lading.

17 Wall. 570-581, 21 L. 657, HORN v. LOCKHART.

Syl. 1 (VIII, 99). Who are indispensable parties.

Approved in Lynch v. United States, 13 Okl. 158, 73 Pac. 1100, where patent issued to homesteader for townsite purposes and many lots sold, government cannot cancel patent for fraud of entryman.

Syl. 2 (VIII, 99). Presence of indispensable parties necessary to jurisdiction.

Approved in New York etc. Co. v. City of New York, 145 Fed. 662, under state statute giving tenant under lease for more than ten years right to sue to remove cloud from title, lessor is not indispensable party to suit by lessee to set aside local improvement assessment.

Syl. 5 (VIII, 101). Validity of acts of rebel states.

Approved in Cullins v. Overton, 7 Okl. 481, 54 Pac. 705, where Texas authorities organized disputed territory into county, whose

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inhabitants exercised all governmental functions until it was decided that territory was not in Texas, judgment of court of such county was valid.

17 Wall. 582-586, 21 L. 682, THE MERRITT.

Syl. 1 (VIII, 103). Nonregistration of vessel owned by citizen.

Approved in The Alta, 148 Fed. 665, vessel not registered in United States, though owned by citizen, is subject to tonnage duty; The Alta, 136 Fed. 519, 69 C. C. A. 289, foreign-built vessel owned by citizen is not subject to tonnage duty.

17 Wall. 596-600, 21 L. 737, SOHN v. WATERSON.

Syl. 1 (VIII, 105). Statutes presumed prospective.

See 111 Am. St. Rep. 461, note.

Syl. 2 (VIII, 105). Limitation statutes may be retroactive.

Approved in Schauble v. Schulz, 137 Fed. 391, 69 C. C. A. 581, Rev. Code N. D. 1899, § 3491a, validating titles held by adverse possession, is retroactive; Herrick v. Boquillas Land etc. Co., 200 U. S. 102, 50 L. 391, 26 Sup. Ct. 192, ten year limitation prescribed by Ariz. Rev. St. 1901, par. 2938, for actions to recover lands adversely held, does not apply to action brought between date when statute enacted and date when revision of statutes took effect; Lamb v. Powder River etc. Co., 132 Fed. 436, 438, 67 L. R. A. 558, 65 C. C. A. 570, holding Colo. Sess. Laws 1895, p. 239, c. 106, as amended in 1899, prescribing limitation of actions on foreign judgments, is void. See 111 Am. St. Rep. 455, note.

Syl. 4 (VIII, 106). When limitations begin to run.

Approved in Crothers v. Edison Electric Co., 149 Fed. 607, 608, 609, under amendment of 1905, 40 Cal. Code Civ. Proc., § 350, reducing limitations for actions for negligence, as to causes of actions previously accrued, but not barred under old law, new period ran from taking effect of amendment; Keagy v. Wellington National Bank, 12 Okl. 36, 69 Pac. 813, statute of limitations does not begin to run until debtor becomes resident of territory; Huber v. Zimmerman, 8 Okl. 574, 58 Pac. 738, holding note sued on not barred; Southgate v. Frier, 8 Okl. 438, 57 Pac. 842, effect of act of 1893, abolishing limitation statute of 1890, was to renew causes of action which had not expired before new statute took effect; Richardson v. Mackay, 4 Okl. 337, 46 Pac. 549, where cause of action arose in another state, statute of limitations does not begin to run until debtor becomes resident of territory.

17 Wall. 604-609, 21 L. 721, UNITED STATES v. BOUTWELL.

Syl. 2 (VIII, 108). Mandamus does not reach office of respondent.

Approved in New Mexico v. Baker, 196 U. S. 440, 49 L. 543, 25 Sup. Ct. 375, successor in office of territorial judge may be substituted in.

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place of predecessor on appeal from denial of mandamus to compel latter to take jurisdiction of action; State v. Board of State Canvassers, 32 Mont. 16, 79 Pac. 403, mandamus to compel state officers to perform duty where, prior to hearing, term of office expired and successors given no notice of proceedings; Holdermann v. Schane, 56 W. Va. 15, 48 S. E. 514, mandamus awarded against mayor and councilmen to compel them to convene as canvassing board cannot be used against successors.

Syl. 6 (VIII, 109). Abatement of mandamus by death or retirement of officer.

Approved in New Mexico v. Baker, 196 U. S. 442, 49 L. 544, 25 Sup. Ct. 375, successor in office of territorial judge may be substituted in place of predecessor on appeal from denial of mandamus to compel latter to take jurisdiction of action; State v. Board of State Canvassers, 32 Mont. 17, 79 Pac. 403, dismissing mandamus to compel state officers to perform official duties where prior to hearing terms expired and demand not made on successors to perform duties.

17 Wall. 610-624, 21 L. 731, SAWYER v. HOAG.

Syl. 1 (VIII, 110). Bankruptcy assignee may set aside conveyances.

Approved in Commercial Bank v. Warthen, 119 Ga. 994, 47 S. E. 537, on corporation's bankruptcy, right of corporation to sue on unpaid stock subscriptions passes to trustee.

Syl. 2 (VIII, 111). Corporation's capital stock is trust fund.

Approved in In re Remington etc. Motor Co., 139 Fed. 776, where corporation conveyed "paid-up" shares of its stock at trifle less than par to board of trade in exchange of building site, and board sold stock at cost, purchasers not liable to further assessments on corporation's bankruptcy.

Syl. 3 (VIII, 115). Directors cannot release stock subscription.

Approved in Vaughn v. Alabama Nat. Bank, 143 Ala. 576, 42 So. 64, stockholder who purchased corporate stock at less than par is liable to corporation's creditors for difference between purchase price and par; Maryland Trust Co. v. National Mech. Bank, 102 Md. 627, 63 Atl. 77, trust company chartered subject to Acts 1892, p. 156, c. 109, § 85e, and Const., art. 3, § 39, cannot purchase its own stock.

17 Wall. 624-630, 21 L. 741, KIBBE v. BENSON.

Syl. 4 (VIII, 119). Service of process at dwelling.

Approved in Graham v. Loh, 32 Ind. App. 187, 69 N. E. 476, in action to vacate judgment for fraud predicated on false return of service of summons, neither allegation in complaint that plaintiff's name forged on note sued on nor long delay in enforcing judgment show fraud in procurement of jurisdiction.

Syl. 5 (VIII, 120). Equity sets aside default—Void service.

Cited in King v. Davis, 137 Fed. 228, arguendo.

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17 Wall. 630-639, 21 L. 717, SMITHS v. SHOEMAKER.

Syl. 5 (VIII, 120). No reversal for harmless error.

Approved in Armour v. Russell, 144 Fed. 615, reversing judgment for servant in action for injuries on account of erroneous instruction as to master's duty regarding safety of tools and place to work; Seattle Elec. Co. v. Hartless, 144 Fed. 381, under Washington statutes making action for personal injury occasioning death survive to wife or children, evidence as to physical condition of widow and daughter is inadmissible; National Biscuit Co. v. Nolan, 138 Fed. 9, 70 C. C. A. 436, reversing judgment in action for personal injuries where plaintiff permitted to testify that she depended on herself for support; Union Pac. R. Co. v. Field, 137 Fed. 18, 69 C. C. A. 536, reversing judgment on account of prejudicial remarks of counsel in argument.

17 Wall. 639-648, 21 L. 661, DANIEL v. WHARTENBY.

Syl. 7 (VIII, 122). Estates—"Issue" depends on context.

Approved in Yocum v. Parker, 134 Fed. 210, 67 C. C. A. 227, under Rev. St. Mo. 1845, c. 32, §§ 5, 6, devise to son, provided if he did die without issue lands to go to another, gave son fee simple devestable on his dying without issue.

Syl. 8 (VIII, 122). Wills—Rule in Shelley's Case.

Approved in dissenting opinion in Doyle v. Andis, 127 Iowa, 57, 102 N. W. 184, 69 L. R. A. 953, majority holding deed to grantee during his natural life and then to his heirs conveys fee simple to him.

17 Wall. 648-651, 21 L. 774, WALKER v. STATE HARBOR COMMISSIONERS.

Syl. 2 (VIII, 123). Following state construction.

Approved in Southern Pac. Co. v. Western Pac. Ry. Co., 144 Fed. 179, 193, determining title to Oakland waterfront.

17 Wall. 657-665, 21 L. 745, SIOUX CITY ETC. RAILROAD CO. v. STOUT.

Syl. 2 (VIII, 125). Care required of child.

Approved in Shellaberger v. Fisher, 143 Fed. 940, holding owner of apartment building liable for injuries to child of five, caused by operation of automatic passenger elevator; Ruhloff v. Fair Haven etc. R. R. Co., 76 Conn. 693, 58 Atl. 7, applying rule where child of eight years run over while crossing street-car tracks; Mattson v. Minnesota etc. R. R. Co., 95 Minn. 482, 111 Am. St. Rep. 487, 104 N. W. 445, 70 L. R. A. 503, holding owner of dynamite leaving same unguarded on premises, where it was found by children and exploded, liable for injuries caused; Dubiver v. City etc. Ry. Co., 44 Or. 236, 74 Pac. 918, applying rule where boy of fifteen years was injured in collision between street-car and wagon which he was driving.

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Syl. 3 (VIII, 126). Railroads—Care required toward trespassers.

Approved in Bucci v. Waterman, 25 R. I. 127, 54 Atl. 1060, allegation that where child attempted to get on wagon was in threatening manner ordered off and so disconcerted that he fell off is sufficient.

Syl. 7 (VIII, 128). Negligence, when question for jury.

Approved in Blackman v. Edsall, 17 Colo. App. 437, 68 Pac. 792, upholding sufficiency of evidence or undue influence in execution of will; Ft. Wayne Traction Co. v. Hardendorf, 164 Ind. 410, 72 N. E. 595, where passenger standing on running-board of street-car was injured by being struck by passing car, question of defendant's negligence in running cars so close together is for jury; Buehner Chair Co. v. Feulner, 164 Ind. 373, 73 N. E. 817, holding question of contributory negligence in action for injuries to servant is for jury; Indianapolis St. Ry. Co. v. O'Donnell, 35 Ind. App. 316, 73 N. E. 164, applying rule where plaintiff injured while crossing street-car tracks; Plainview v. Mendelson, 65 Neb. 90, 90 N. W. 957, upholding submission of question of negligence in construction of sidewalk; Neeley v. Southwestern etc. Oil Co., 13 Okl. 371, 75 Pac. 542, 65 L. R. A. 145, applying rule in action against master for personal injuries sustained by servant.

Syl. 8 (VIII, 132). Railroads—Injury to child in turntable.

Approved in Chicago etc. R. Co. v. Krayenbuhl, 65 Neb. 900, 91 N. W. 881, 59 L. R. A. 920, following rule; Shellaberger v. Fisher, 143 Fed. 939, holding owner of apartment building liable for injuries to child of five, caused by operation of automatic passenger elevator; York v. Pacific etc. Ry. Co., 8 Idaho, 585, 69 Pac. 1045, upholding verdict for plaintiff in action for death of child of four years while playing on turntable; Lopes v. Sahuque, 114 La. 1012, 38 So. 813, holding where child injured while playing on defendant's cart left in street, there can be no recovery.

Limited in Driscoll v. Clark, 32 Mont. 180, 181, 80 Pac. 2, in action for injuries to child while playing around machinery, allegation that machinery attracted children is insufficient.

Qualified in Walker v. Potomac etc. R. Co., 105 Va. 228, 229, 53 S. E. 113, 114, holding railroad maintaining unfastened turntable on premises about fifty feet from public grounds not liable for injuries to trespassing child of twelve years.

Distinguished in Seymour v. Union Stockyards Co., 224 Ill. 585, 79 N. E. 951, where child attracted to right of way by clay piled along tracks, and while playing there was attracted to passing train and began playing alongside of cars, railroad not liable for injuries; Foster-Herbert Stone Co. v. Pugh, 115 Tenn. 698, 91 S. W. 202, stone truck with bed below axle is not peculiarly attractive to children so to require owner to exercise greater care in its use than employment of careful driver.

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17 Wall. 666-672, 21 L. 683, THE EMILY SOUDER.

Syl. 4 (VIII, 135). Note not presumed to be payment.

Approved in The Winnebago, 141 Fed. 951, giving of notes by owner of ship under construction to materialman to raise funds does not deprive latter of right to lien.

Syl. 6 (VIII, 136). Advances to captain in foreign port.

Approved in The Worthington, 133 Fed. 725, 70 L. R. A. 353, 66 C. C. A. 555, one loaning funds in foreign port to owner of vessel to be used in loading her is entitled to lien; The Surprise, 129 Fed. 875, 64 C. C. A. 309, though vessel navigated by charterer, who is to make all disbursements and protect vessel from liens, one furnishing wharfage and supplies in foreign port on order of master acquires lien.

Syl. 7 (VIII, 136). Presumptions as to advances in foreign port.

Approved in The City of Camden, 147 Fed. 848, one lending money on credit of vessel to enable owner to pay off liens thereon given by state law, and which is so used, acquires lien of equal standing with those discharged; The Alcalde, 132 Fed. 78, where, while ship at port of discharge, receiver appointed in suit between owners, but master refused to surrender her until wages paid, and then he drew draft and paid himself and crew and left ship, lender not entitled to lien.

XVIII WALLACE.

18 Wall. 5-50, 21 L. 787, UNION PACIFIC RAILROAD CO. v. PENISTON.

Syl. 1 (VIII, 139). Limits of state taxing power.

Approved in Union Refrigerator Transit Co. v. Kentucky, 199 U. S. 206, 50 L. 154, 26 Sup. Ct. 36, due process is denied Kentucky corporation by tax assessed under Kentucky statute on its rolling stock located in other states.

Syl. 7 (VIII, 140). Exemption of federal agencies from state tax.

Approved in Hibernia Savings etc. Soc. v. San Francisco, 200 U. S. 314, 50 L. 496, 26 Sup. Ct. 265, United States Treasury checks for interest on government bonds are taxable by state in hands of owner; Baltimore Shipbuilding etc. Co. v. Baltimore, 195 U. S. 382, 49 L. 245, 25 Sup. Ct. 50, land conveyed by government to corporation for drydock purposes is not exempt from state taxation because of reservation of right to free use of dock; Noble v. Amoretti, 11 Wyo. 251, 71 Pac. 881, upholding state tax on stock of goods of licensed Indian trader located on reservation.

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18 Wall. 57-71, 21 L. 798, WEBER v. BOARD OF HARBOR COMMISSIONERS.

Syl. 1 (VIII, 142). Riparian owner's right of access.

Approved in United States v. Roth, 2 Alaska, 263, one entering shore lands between high and low water mark in front of homestead entry of public lands is trespasser; Sutter v. Heckman, 1 Alaska, 91, granting injunction to protect owner of upland in right of ingress and egress between land and sea over tide lands.

Syl. 5 (VIII, 144). Riparian owner's right to wharf out.

Approved in West Chicago St. R. R. Co. v. Illinois, 201 U. S. 524, 50 L. 852, 26 Sup. Ct. 518, upholding right to require street railway to stand expense of lowering tunnel constructed by it under river, which, though not obstruction to navigation when constructed, has become such by increased size of vessels using river; Southern Pac. Co. v. Western Pac. Ry. Co., 144 Fed. 199, 201, determining title to Oakland waterfront; Sutter v. Heckman, 1 Alaska, 88, granting injunction to protect owner of upland in right of ingress and egress between land and sea over tide lands; City of Providence v. Comstock, 27 R. I. 552, 65 Atl. 312, title to land along original shore line of tide water, together with title to filled land between such land and present shore, gives owner no right to occupy bed of stream as against state.

Syl. 4 (VIII, 143). Title to tide lands on admission of state.

Approved in United States v. Roth, 2 Alaska, 259, one entering on shore land between high and low water mark in front of homestead entry of public lands is trespasser; Alaska Gold Mining Co. v. Barbridge, 1 Alaska, 316, lands lying below ordinary high tide on shore of ocean in Alaska are not subject to mining location; City of Providence v. Comstock, 27 R. I. 543, 65 Atl. 308, title to land along original shore line of tide waters, together with title to filled land between such land and present shore, does not give right to occupy bed of river as against state.

Syl. 10 (VIII, 145). Limitations do not run against state.

Approved in Hagerman v. Territory, 11 N. M. 160, 66 Pac. 526, action brought in name of territory for delinquent taxes which are property of county in which assessed is not barred by general limitation statute.

18 Wall. 71-84, 21 L. 771, SUPERVISORS v. UNITED STATES.

Syl. 4 (VIII, 145). Following state statutory construction.

Approved in York v. Washburn, 129 Fed. 569, 64 C. C. A. 132, applying rule to question whether oral contract for lease of realty for more than one year, not complying with statute of frauds, is void or voidable.

Syl. 6 (VIII, 146). County tax levy to pay judgment.

Approved in Atchison etc. R. R. Co. v. Territory, 11 N. M. 676, 72 Pac. 16, court may ascertain whether claim which is basis of judg-

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ment against county is legally payable out of taxes sought to be so applied.

18 Wall. 112-120, 21 L. 805, BEST v. POLK.

Syl. 3 (VIII, 148). Patent conveying reserved lands is void.

Distinguished in Wallace v. Adams, 143 Fed. 722, upholding Act of 1902, creating citizenship court, empowered to review final judgments of federal courts under 29 Stat. 339, which has been affirmed by supreme court.

18 Wall. 120-125, 21 L. 821, COFFIN v. OGDEN.

Syl. 1 (VIII, 149). Patent infringement—Invention as defense.

Approved in Eastern Paper Bag Co. v. Continental Paper Bag Co., 142 Fed. 517, upholding Liddell patent No. 558,969, for paper-bag machine, and holding it infringed by Claussen patent No. 598,497.

Syl. 2 (VIII, 150). Patent infringement—Burden of proof.

Approved in Laas v. Scott, 145 Fed. 196 (affirmed in Scott v. Laas, 150 Fed. 765), judgment for complainant in District of Columbia supreme court, on appeal from proceedings in patent office, creates presumption of priority of invention; Koerner v. Deuther, 143 Fed. 548, holding Koerner patent No. 392,735, for printers' drying rack, not anticipated and infringed; Merrimac etc. Mfg. Co. v. Feldman, 133 Fed. 67, holding Leighton patent No. 667,916, for inconvertible couch bed, void for anticipation.

Syl. 3 (VIII, 151). Patent infringement—Prior use as defense.

Approved in United Shoe Mach. Co. v. Greenman, 145 Fed. 541, though one having embodied invention in machine, whose use was abandoned, failed to describe it in patent granted to him, so that latter was inoperative, attempt to obtain patent is evidence that invention was not abandoned; Daniel v. Restein, 131 Fed. 473, holding Miller patent No. 524,178, for packing, void for anticipation.

18 Wall. 125-129, 21 L. 812, UNITED STATES v. BUZZO.

Syl. 2 (VIII, 151). Failure to stamp—Intent.

Approved in Territory v. Baca, 11 N. M. 564, 566, 71 Pac. 462, holding erroneous refusal of instructions in prosecution for assault with intent to murder that if defendant cut witness without intent so to do he is not guilty.

18 Wall. 129-141, 21 L. 929, BARTEMEYER v. IOWA.

Syl. 1 (VIII, 152). Police power—Regulation of liquor traffic.

Approved in Meyer v. City of Mobile, 147 Fed. 845, upholding ordinance licensing beer dealers as applied to sale of beer in bottles brought from other states; State v. Durein, 70 Kan. 29, 30, 80 Pac. 992, 993, upholding constitutional and statutory prohibition against sale of liquor; Harrell v. Speed, 113 Tenn. 230, 106 Am. St. Rep. 814, 81 S. W. 841, one running bar on boat plying between Arkansas and

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Tennessee is subject to license tax imposed by Tennessee statute for running bar while vessel is at landing in Tennessee; Webster v. State, 110 Tenn. 505, 82 S. W. 182, upholding statute prohibiting sale of liquor within four miles of institution of learning.

Syl. 2 (VIII, 153). Right to sell liquor not privilege of citizenship.

Approved in Jordan v. Evansville, 163 Ind. 515, 516, 517, 72 N. E. 545, 546, 67 L. R. A. 613, upholding Burns' Ann. St. 1901, § 3927, giving city power to require license to sell liquor within four miles of corporate limits; State v. Frederickson, 101 Me. 46, 63 Atl. 539, upholding Rev. St., c. 29, § 40, declaring certain beverages, including cider, when kept with intent to sell same for tippling purposes, to be intoxicating; Sandys v. Williams, 46 Or. 340, 80 Pac. 647, upholding ordinance prohibiting sale of liquor in private rooms.

Syl. 4 (VIII, 154). Questions considered on writ of error.

Approved in Cox v. Texas, 202 U. S. 451, 50 L. 1101, 26 Sup. Ct. 671, federal question, though referred to in assignments of errors in state appellate court and in supreme court, not considered an error where it does not appear that state court considered question.

18 Wall. 141-151, 21 L. 824, SYKES v. CHADWICK.

Syl. 2 (VIII, 154). Suit by wife alone respecting dower release.

Approved in James v. Gray, 131 Fed. 406, 407, 65 C. C. A. 385, loan by wife to husband from separate estate is provable as debt against his bankrupt estate irrespective of its enforceability under state laws.

18 Wall. 151-155, 21 L. 775, BATESVILLE INST. v. KAUFFMAN.

Syl. 2 (VIII, 155). Assignment of debt carries security.

Approved in Kirkpatrick v. Eastern M. & E. Co., 135 Fed. 149, where person executed underwriting agreement with corporation, agreeing to purchase its bonds, he to receive stock as bonus, but before delivery of bonds they were pledged to bank together with assignment of underwriting agreement but stock not delivered, bank could require receiver to turn over stock to it.

18 Wall. 156-162, 21 L. 860, DAY v. MICOU.

Syl. 5 (VIII, 156). Sale of confiscated property subject to mortgage.

Approved in Middleton v. Moore, 43 Or. 362, 73 Pac. 17, under law in force in 1897-98, tax deed did not cut off lien of mortgage executed prior to assessment and levy of tax.

18 Wall. 163-205, 21 L. 872, EX PARTE LANGE.

Syl. 1 (VIII, 156). Habeas corpus to determine legality of imprisonment.

Approved in Jamison v. Wimbish, 130 Fed. 361, granting habeas corpus where petitioner sentenced by police judge for petty municipal offense to seven months in chain gang; Ex parte Harlan, 1 Okl. 50, 27 Pac. 921, habeas corpus does not lie where trial court had jurisdiction

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of subject matter of indictment and of person of accused to determine sufficiency of indictment to charge offense.

Distinguished in Whitney v. Dick, 202 U. S. 138, 50 L. 965, 26 Sup. Ct. 584, circuit court of appeals cannot issue certiorari to review conviction in inferior federal court where only question is whether punishment of offense is within federal jurisdiction; Ex parte Gfeller, 178 Mo. 266, 77 S. W. 557, in proceeding for discovery of assets of estate of decedent, deposition may be taken.

Syl. 6 (VIII, 160). Double jeopardy prohibited.

Approved in Kepner v. United States, 195 U. S. 126, 49 L. 123, 24 Sup. Ct. 797, 32 Stat. 691, c. 1369, § 5, relating to double jeopardy, prohibits right of government to appeal from judgment of acquittal in court of first instance in Philippines.

Distinguished in In re McClaskey, 2 Okl. 576, 577, 37 Pac. 857, where defendant is convicted and judgment pronounced and he is put in penitentiary and subsequently remanded to trial court on ground of lack of jurisdiction, he was not in jeopardy.

Syl. 7 (VIII, 160). Former jeopardy good defense to prosecution.

Approved in dissenting opinion in Kepner v. United States, 195 U. S. 134, 49 L. 126, 24 Sup. Ct. 797, majority holding 32 Stat. 691, c. 1369, § 5, relating to double jeopardy, prohibits government from appealing from judgment of acquittal in court of first instance in Philippines.

Syl. 8 (VIII, 161). Erroneous judgment not void.

Approved in McVeigh v. Ripley, 77 Conn. 141, 58 Atl. 703, where statute punished horse-stealing by imprisonment and theft of property less than $15 in value by fine of not more than $7, justice fining one $5 for stealing $10 horse and committing him till fine paid is not liable for false imprisonment; dissenting opinion in Kepner v. United States, 195 U. S. 135, 49 L. 127, 24 Sup. Ct. 797, majority holding 32 Stat. 691, c. 1369, § 5, relating to double jeopardy, prohibits appeal by government from acquittal in Philippine court of first instance.

Syl. 11 (VIII, 162). Erroneous judgment not validated by jurisdiction.

Approved in In re Patzwald, 5 Okl. 794, 50 Pac. 141, upholding right to inquire into jurisdiction of court on whole review by habeas corpus.

Syl. 12 (VIII, 162). Judgment without jurisdiction is void.

Approved in Ex parte Robinson, 144 Fed. 836, where circuit court had no jurisdiction over subject matter of suit, its adjudication that party was in contempt for violating injunction issued therein is void; C. C. Taft Co. v. Century Sav. Bank, 141 Fed. 371, omission in petition in involuntary bankruptcy of allegation that defendant owes debts to amount of over $1,000 is jurisdictional; Banking House of A. Castetter v. Dukes, 70 Neb. 653, 97 N. W. 807, where record shows all steps by

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which court of general jurisdiction acquired jurisdiction, and they show on face lack of jurisdiction, judgment is collaterally attackable.

Distinguished in Spriggs v. Commonwealth, 113 Ky. 733, 68 S. W. 1089, erroneous instructions, though sufficient to entitle defendant to new trial, do not entitle him to discharge from custody.

Syl. 13 (VIII, 162). Satisfaction of alternate punishment.

Approved in Ex parte Peeke, 144 Fed. 1017, where petitioner was convicted on five counts, each charging separate offense, and was sentenced to five years, and maximum punishment was two years, sentence was void as to excess over two years; In re McNeil, 68 Kan. 367, 74 Pac. 1110, where statute fixes punishment at fine or imprisonment, one sentenced to jail and to pay fine and to stand committed till fine paid is entitled to discharge on payment of fine.

Distinguished in Clevenger v. Figley, 68 Kan. 707, 75 Pac. 1004, judgment, in action to foreclose mortgage given by land owner jointly with guardian of insane, determining existence of homestead at time mortgage executed is not collaterally attackable.

Syl. 14 (VIII, 162). Service of sentence under void judgment.

See 111 Am. St. Rep. 949, note.

18 Wall. 206-232, 21 L. 888, THE DELAWARE RAILROAD TAX.

Syl. 4 (VIII, 163). Tax exemption must clearly appear.

Approved in American Smelting etc. Co. v. People, 34 Colo. 254, 82 Pac. 536, acts of 1897 and 1901, requiring foreign corporations to pay filing fee as condition precedent to doing business in state, does not exempt from further taxation; dissenting opinion in Blair v. Chicago, 201 U. S. 498, 50 L. 842, 26 Sup. Ct. 427, majority holding right to use Chicago streets was not extended for ninety-nine years, without reference to time limit fixed by city, by Illinois Act of February 6, 1865.

Syl. 8 (VIII, 166). State taxing power not extraterritorial.

Approved in St. Louis etc. Ry. Co. v. Davis, 132 Fed. 634, denying federal jurisdiction where state board assessed property of railroad at higher percentage of actual value than property of other classes is assessed.

Syl. 12 (VIII, 167). Basis of assessment and tax rate discretionary.

Approved in Michigan R. R. Tax Cases, 138 Fed. 234, upholding Mich. Pub. Acts 1901, p. 236, providing for taxation of railroad property by state assessors by ascertaining average rate of taxation of other property by means of reports of local taxing bodies; Kersey v. Terre Haute, 161 Ind. 474, 68 N. E. 1029, upholding city ordinance taxing vehicles using streets but omitting street-cars, automobiles and vehicles of nonresidents.

Syl. 13 (VIII, 167). Corporate tax on basis of capital stock.

Approved in State v. Canadian Pac. Ry. Co., 100 Me. 207, 60 Atl. 903, upholding Rev. St. 1883, c. 6, § 42, as amended in 1901, imposing

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excise tax on railroads based on average gross receipts per mile of road operated; Chicago etc. R. Co. v. State, 128 Wis. 590, 108 N. W. 562, upholding Wis. Laws 1903, c. 315, p. 491, relating to taxation of railroads on unit system.

Syl. 14 (VIII, 167). Railroad tax based on capital stock—Franchise.

Approved in People v. Reardon, 184 N. Y. 455, 112 Am. St. Rep. 644, 77 N. E. 978, upholding Laws 1905, pp. 474, 477, c. 241, §§ 315, 324, imposing tax on transfers of corporate stock.

18 Wall. 233-236, 21 L. 902, CHICAGO CITY RAILWAY CO. v. ALLERTON.

Syl. 2 (VIII, 169). Corporations—Stockholders alone can increase capital.

Distinguished in Burnes v. Burnes, 132 Fed. 497, solvent corporation which accepted transfer of its own stock under its agreement to pay annuity to former owners and received dividends thereon cannot avoid contract as ultra vires.

Syl. 4 (VIII, 169). Consent of stockholders necessary to change purpose. See 103 Am. St. Rep. 559, note.

18 Wall. 237-254, 21 L. 827, MERCANTILE MUTUAL INSURANCE CO. v. FOLSOM.

Syl. 1 (VIII, 170). Findings on waiver of jury.

Approved in Paul v. Delaware etc. R. Co., 130 Fed. 952, following rule.

Syl. 3 (VIII, 171). Finding of court equivalent of special verdict.

Approved in Paul v. Delaware etc. R. Co., 130 Fed. 956, following rule.

Syl. 4 (VIII, 171). Review of general findings of court.

Approved in Streeter v. Sanitary Dist. of Chicago, 133 Fed. 126, 128, 66 C. C. A. 190, and Paul v. Delaware etc. R. Co., 130 Fed. 953, 954, 956, both following rule; West v. Houston Oil Co., 136 Fed. 350, 69 C. C. A. 169, applying rule in trespass to try title.

Syl. 6 (VIII, 171). Nonsuit in federal court—Exceptions.

Approved in Paul v. Delaware etc. R. Co., 130 Fed. 955, following rule; United States Fidelity etc. Co. v. Board of Commrs., 145 Fed. 151, refusing to review judgment in action on fidelity bond tried without jury.

Syl. 8 (VIII, 171). Scope of review of court's special findings.

Approved in Paul v. Delaware etc. R. Co., 130 Fed. 956, following rule; Jones v. United States, 135 Fed. 519, 68 C. C. A. 68, making of special findings by federal court on waiver of jury is governed by Rev. St., §§ 649, 700, and not by state statutes.

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18 Wall. 255-272, 21 L. 835, HENSHAW v. BISSELL.

Syl. 5 (VIII, 172). Priority between floating grants.

Approved in Catron v. Laughlin, 11 N. M. 633, 72 Pac. 32, where surveyor general of New Mexico declared Mexican grant good and valid and recommended it to Congress for confirmation without limitation as to quantity, congressional confirmation adjudicates validity of title for all land claimed.

Syl. 9 (VIII, 173). Limitations during land confirmation proceedings.

Approved in Tyee Consol. Min. Co. v. Langstedt, 136 Fed. 128, 69 C. C. A. 548, there is no disseisin sufficient to start operation of limitations as against locator of mining claim prior to issuance of patent.

Syl. 10 (VIII, 173). Doctrine of equitable estoppel.

Approved in Wiser v. Lawler, 7 Ariz. 191, 62 Pac. 703, holding defendants not estopped to assert title to mine contracted to be sold under agreement reserving title till full payment.

Distinguished in dissenting opinion in Grice v. Woodworth, 10 Idaho, 474, 109 Am. St. Rep. 214, 80 Pac. 917, 69 L. R. A. 584, majority holding where husband and wife entered into oral contract for sale of homestead and purchaser took possession, paid price and made improvements with knowledge and consent of wife, they must execute conveyance.

18 Wall. 272-307, 21 L. 841, ATKINS v. THE DISINTEGRATING CO.

Syl. 3 (VIII, 175). Statutory construction—Pari materia—Context.

Approved in Pitts v. Logan County, 3 Okl. 740, 41 Pac. 591, clerks of territorial district courts must account to secretary of treasury for all fees earned by them as such clerks.

18 Wall. 307-317, 21 L. 759, LAMB v. DAVENPORT.

Syl. 2 (VIII, 176). Sale of settler's possessory rights.

Approved in Coleman v. Territory, 5 Okl. 204, 47 Pac. 1080, it is forgery to procure another to make and counterfeit order to register of land office to dismiss pending land contest; Tecumseh State Bk. v. Maddox, 4 Okl. 594, 46 Pac. 567, relinquishment of preferential right to entry on public lands and agreement to sell personalty thereon are good consideration for assignment of moneys; City of Guthrie v. Beamer, 3 Okl. 662, 41 Pac. 650, where survey and plat for townsite made and adopted by inhabitants prior to townsite act of 1890, and afterward Secretary of Interior adopted plat, individual claims to streets and alleys were devested; McKennon v. Winn, 1 Okl. 335, 33 Pac. 585, 22 L. R. A. 501, enforcing specific performance of agreement whereby townsite claimant agreed to acquire title to townsite lot for joint benefit of himself and plaintiff in consideration of latter paying for fences and house; Waring v. Loomis, 35 Wash. 90, 76 Pac. 512,

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contract between joint occupiers of government land with intent to acquire title thereto, stipulating for payment of sum by one to another as part of expense of erecting dwelling, and providing that one shall occupy dwelling and acquire title for other to extent of his interest, is based upon good considerations.

18 Wall. 317-322, 21 L. 784. SNOW v. UNITED STATES.

Syl. 2 (VIII, 177). Organic act rules territories.

Approved in Ex parte Haly, 1 Okl. 14, 25 Pac. 515, under Organic Act, § 10, United States commissioner may commit one charged with assault to custody of marshal.

18 Wall. 322-331, 21 L. 763, WESTRAY v. UNITED STATES.

Syl. 1 (VIII, 177). Notice of liquidation of duties unnecessary.

Approved in Kahn v. Herold, 147 Fed. 580, where, at time executors paid inheritance tax on life estate under protest, they did not know life tenant had died, payment was not voluntary.

18 Wall. 332-342, 21 L. 933, COOK v. TULLIS.

Syl. 1 (VIII, 178). Ratification of agent's act equivalent to authority.

Approved in Stickley v. Widle, 122 Iowa, 402, 98 N. W. 136, where wife fails to ratify husband's oral contract for sale of homestead until after its abandonment and after its attachment by husband's creditors, her ratification does not prejudice creditors.

Syl. 2 (VIII, 179). Bankruptcy—Fair exchange of values by insolvent.

Approved in Tomlinson v. Bank of Lexington, 145 Fed. 828, where manufacturing concern made overdrafts under agreement, whereby subsequent deposits applied in payment thereof, deposits so made and applied in payment of overdrafts made in due course of business are not preferences.

Syl. 4 (VIII, 180). Bankruptcy trustee's title subject to claims.

Approved in Smith v. Au Gres Twp., 150 Fed. 264, witness may testify, after death of bankrupt, to admissions made by bankrupt concerning his estate while he was yet owner thereof; Page Co. v. Rose, 130 Iowa, 299, 106 N. W. 745, where county treasurer deposited tax receipts with bank for collection and bank collected same and credited same to treasurer in representative capacity, county was entitled to preference on bank's insolvency.

Distinguished in Kimmel v. Bean, 68 Kan. 603, 75 Pac. 1120, 64 L. R. A. 785, bank receiving from agent for deposit in own name money of principal, without notice of agency, may apply deposit to overdraft.

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Syl. 5 (VIII, 181). Following trust funds.

Approved in Smith v. Au Gres Twp., 150 Fed. 265, where bankrupt, who was township trustee, used township money to buy goods for sale in his business and mingled them with other goods, township had equitable lien on proceeds of sale of stock by bankrupt's trustee for amount appropriated; United States v. Thurston Co., 143 Fed. 290, proceeds of sales of lands allotted to Indians by Indian heirs of allottees under 32 Stat. 245, c. 888, § 7, which have been deposited in bank to credit of heirs, are exempt from state taxation.

18 Wall. 350-375, 21 L. 959, GALPIN v. PAGE.

Syl. 2 (VIII, 183). Presumptions in favor of jurisdiction.

Approved in Woodworth v. McKee, 126 Iowa, 716, 102 N. W. 777, where certificate to judgment record of sister state court shows court was court of record, mere denial of its jurisdiction does not cast burden of proving its existence on one relying on judgment; Russell v. Houston, 115 Tenn. 541, 91 S. W. 194, where papers in case have disappeared from clerk's office and cannot be found, final decree and entries on docket are admissible to show former adjudication; Clark v. Eltinge, 38 Wash. 381, 107 Am. St. Rep. 858, 80 Pac. 558, whether record of foreign judgment is properly authenticated is for trial court.

Syl. 3 (VIII, 183). Presumptions as to jurisdiction of superior courts.

Approved in Johnson v. Hunter, 147 Fed. 137, 139, under Arkansas Laws, 1895, p. 88, for enforcement of payment of levee taxes, affidavit that defendant, proceeded against as unknown owner, is nonresident of county and absent therefrom and that land is unoccupied is prerequisite to service by publication; Alaska Commercial Co. v. Debney, 2 Alaska, 319, under statutes of Yukon Territory providing for service on agent where defendant is out of territory, where defendant gave brother power of attorney to transact his business, service on brother while he was not transacting any business for defendant is void; Gulling v. Washoe Co. Bank, 28 Nev. 488, 82 Pac. 802, answer directed against complainant, but which seeks affirmative relief against codefendant, raises no issue as to latter where it is not served on him, and he does not answer or demur, and judgment granting affirmative relief is not res adjudicata as against codefendant; Turner v. Barraud, 102 Va. 329, 331, 46 S. E. 319, 321, where only mention of one infant defendant, as shown by record, is in bill and in caption of answer of guardian appointed for other infant defendants, whose interests are adverse to former, use of words "infant defendants" in decree is not treatment of former as party to suit.

Distinguished in Taylor v. Huntington, 34 Wash. 459, 75 Pac. 1105, court of general jurisdiction foreclosing tax lien cannot be vacated on ground that affidavit for publication of notice was defective, and it did not appear that holder of delinquency certificate had paid accrued taxes.

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Syl. 4 (VIII, 184). Scope of presumption as to jurisdiction of superior court.

Approved in First National Bank v. Eastman, 144 Cal. 491, 103 Am. St. Rep. 95, 77 Pac. 1045, judgment on personal service outside state on nonresident pursuant to Code Civ. Proc., § 413, is void except as to disposition of property seized thereunder; Comesky v. Suffern, 179 N. Y. 398, 72 N. E. 322, where claimant petitioned court to appoint commissioners to award damages for change of street grade, and answer denied all facts except village's jurisdiction over street and alleged waiver of claim by petitioner, award made without opportunity to village to prove issues raised by answer is void.

Syl. 6 (VIII, 186). Statutes authorizing constructive service.

Approved in Cohen v. Portland Lodge of Elks, 144 Fed. 269, upholding sufficiency of affidavit for publication of summons in action to foreclose mortgage; Clay v. Bilby, 72 Ark. 108, 78 S. W. 751, in proceedings for sale under overdue tax act of 1881, affidavit of publication of warning order not insufficient on collateral attack for failure of affiant to state that he was publisher, that paper published in county or that it had bona fide circulation in county for one month prior to first publication; Kerns v. McAulay, 8 Idaho, 565, 69 Pac. 540, where service of summons on nonresident is made by publication and his property within state is attached, and personal judgment thereafter entered, judgment is valid as against property attached.

Distinguished in McHatton v. Rhodes, 143 Cal. 280, 101 Am. St. Rep. 125, 76 Pac. 1038, presumption is in favor of jurisdiction of court of general jurisdiction to render judgment where service had by publication.

Syl. 7 (VIII, 187). Records must show special jurisdictional facts.

Approved in dissenting opinion in Clay v. Bilby, 72 Ark. 115, 78 S. W. 754, majority holding in proceedings for sale of land under overdue tax act of 1881, affidavit of publication of warning order not insufficient on collateral attack for failure of affiant to state that he was publisher of paper, that it was published in county and that it had bona fide circulation therein for one month prior to first publication; dissenting opinion in Indiana Trust Co. v. Byram, 36 Ind. App. 25, 72 N. E. 677, majority holding that where decedent had been claimant's agent to make investments and take notes, and on decedent's death note found payable to claimant with indorsements of payments on it, and claimant had no knowledge of it, presumption that decedent held note as agent.

Distinguished in Taylor v. Huntington, 34 Wash. 458, 75 Pac. 1105, judgment of court of general jurisdiction foreclosing tax lien cannot be vacated on ground that affidavit for publication of notice was defective and it did not appear that holder of delinquency certificate had paid accrued taxes.

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18 Wall. 375-391, 21 L. 868, TIFFANY v. BOATMAN'S INSTITUTION.

Syl. 9 (VIII, 190). Bankruptcy—Bona fide mortgage.

Approved in In re Clifford, 136 Fed. 477, under Comp. St. 1901, p. 3449, recording of mortgage given for present consideration prior to commencement of bankruptcy proceedings is sufficient; Crim v. Woodford, 136 Fed. 41, 68 C. C. A. 584, liens given by insolvent within four months prior to bankruptcy to secure present loans, valid under state laws, are not preferences, though lender knew borrower had overdraft; In re Pease, 129 Fed. 448, where trust company, through its attorney, who also represented other creditors, made loan to insolvent merchant secured by mortgage on goods, with which certain creditors, including clients, paid in full, and company sold out stock on next day under mortgage, mortgage was illegal preference.

Syl. 10 (VIII, 190). Bankruptcy—Advances to debtor.

Distinguished in In re Moody, 134 Fed. 633, where bankrupt merchant sold stock to firm in exchange for farm taken in wife's name and for further consideration of payment of debt due to bank, of which partners were officers, transfer was illegal preference; In re Pease, 129 Fed. 451, 452, where trust company, through its attorney, who also represented other creditors, made loan to insolvent merchant secured by mortgagee on goods, with which certain creditors, including clients, paid in full, and company on next day sold stock under mortgage, mortgage was illegal preference.

(VIII, 189.) Miscellaneous. Cited in In re Stern, 144 Fed. 958, defense of usury is available to debtor's trustee in bankruptcy.

18 Wall. 391-409, 21 L. 944, TRASK v. MAGUIRE.

Syl. 6 (VIII, 191). Prohibition against tax immunities.

Approved in Lake Drummond Canal Co. v. Commonwealth, 103 Va. 355, 49 S. E. 512, corporation created under Code 1887, § 1234, on purchase of property of another corporation on foreclosure, cannot claim tax immunity granted to original corporation prior to constitution.

18 Wall. 409-413, 21 L. 862, TIFFANY v. BANK OF MISSOURI.

Syl. 2 (VIII, 192). Statute penalizing usurious interest.

Approved in Keppel v. Tiffin Sav. Bank, 197 U. S. 362, 49 L. 792, 25 Sup. Ct. 443, creditor of bankrupt who has in good faith received preference, voidable solely because given within four months, and has retained it until deprived of it by order of court, may prove his debt; In re Worth, 130 Fed. 930, under Iowa Code, 1897, § 3041, making usurious contracts voidable only to extent of usurious interest, creditors of bankrupt cannot plead usury against claim of another creditor.

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18 Wall. 436-457, 21 L. 779, LUCAS v. BROOKS.

Syl. 1 (VIII, 194). Tenant estopped to deny landlord's title.

Approved in Bullard v. Hudson, 125 Ga. 397, 54 S. E. 134, where possessor of premises agrees to pay party rent for them, he cannot set up title adverse to landlord, even after expiration of term, without first surrendering premises; Hodges v. Waters, 124 Ga. 233, 110 Am. St. Rep. 167, 52 S. E. 163, 1 L. R. A. (N. S.) 1181, where tenant in possession agreed to pay rent to another than his landlord for given time, no promise to pay rent after expiration is implied though he remain in possession; Hagar v. Wikoff, 2 Okl. 585, 39 Pac. 282, applying rule where wife rented townsite lot and husband resided there with her.

Syl. 9 (VIII, 195). Objections to instructions must be specific.

Distinguished in Rhea v. United States, 6 Okl. 257, 50 Pac. 994, upholding sufficiency of exception to separate instructions where record shows that to giving of each and every and all of said instructions defendant excepted separately at the time.

Syl. 11 (VIII, 195). Wife's lease inuring to husband's benefit.

Approved in Hagar v. Wikoff, 2 Okl. 586, 39 Pac. 283, applying rule where wife rented townsite lot and husband resided there with her.

18 Wall. 457-471, 21 L. 897, THOMPSON v. WHITMAN.

Syl. 1 (VIII, 195). Foreign judgment—Full faith and credit.

Approved in National Exchange Bank v. Wiley, 195 U. S. 269, 270, 49 L. 190, 25 Sup. Ct. 70, judgment taken under warrant of attorney, annexed to note authorizing confession of judgment in favor of holder, is collaterally attackable in suit in another state on ground that one in whose favor it was rendered was not holder because he was not real owner of note.

Syl. 5 (VIII, 197). Conclusiveness of foreign judgment—Recitals.

Approved in Cooper v. Brazelton, 135 Fed. 479, 68 C. C. A. 188, president of bank to which borrowing members of foreign building association paid dues to be forwarded to home office was not, after bank ceased to do business for it, agent of association for purpose of service of process; In re Culp, 2 Cal. App. 81, 83 Pac. 94, under Code Civ. Proc., §§ 1915, 1916, personal judgment of another state is collaterally attackable on ground of lack of jurisdiction though judgment recites due notice; Watkinson v. Watkinson, 67 N. J. Eq. 155, 58 Atl. 389, defendant in divorce decree may set aside decree, where neither spouse had domicile in state and defendant served outside of state did not appear; In re Box's Will, 127 Wis. 270, 106 N. W. 1065, where copy of will admitted to probate in another state and of record showing its admission to probate not authenticated as required by statute, county court has no jurisdiction to admit it to probate; dissenting opinion in Haddock v. Haddock, 201 U. S. 608, 50 L. 885, 26 Sup. Ct. 225, majority holding mere domicile within state of one spouse does not give court jurisdic-

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tion to render divorce decree enforceable in other states against nonresident nonappearing defendant served by publication; dissenting opinion in United States v. Ju Toy, 198 U. S. 275, 277, 49 L. 1049, 1050, 25 Sup. Ct. 644, majority holding decision of Secretary of Commerce affirming denial by immigration officers of right of Chinese to enter is conclusive on habeas corpus when citizenship is ground on which right of entry claimed; dissenting opinion in Jordan v. Chicago etc. Ry. Co., 125 Wis. 592, 110 Am. St. Rep. 865, 104 N. W. 807, 1 L. R. A. (N. S.) 885, majority holding determination of county court on petition by public administrator for letters that decedent left property in state is not collaterally attackable. See 103 Am. St. Rep. 308, note.

Distinguished in Cohen v. Portland Lodge, 142 B. P. O. E., 140 Fed. 775, domestic judgment is not conclusive against defendant who was not served or did not appear or was not defaulted; Cuykendall v. Doe, 129 Iowa, 457, 105 N. W. 700, where judgment regularly confessed under warrant of attorney and entered in court of state where debtor resided at time of execution and in accordance with its laws, it is enforceable here though judgments so confessed not permitted by our law.

Syl. 8 (VIII, 199). Judgments without jurisdiction are void.

Approved in Beeman v. Kitzman, 124 Iowa, 89, 99 N. W. 172, where husband went to another state with no intention of remaining there and sued for divorce immediately after residing there jurisdictional period and left immediately after procuring decree, wife not appearing, court had no jurisdiction.

Syl. 9 (VIII, 200). Inquiry into jurisdiction—Foreign judgment.

Approved in Phoenix Bridge Co. v. Castleberry, 131 Fed. 177, 65 C. C. A. 481, determining priority of jurisdiction over administration of estate under South Carolina statute.

18 Wall. 493-509, 21 L. 904, CLARKE v. BOORMAN.

Syl. 1 (VIII, 202). Construction of wills—Surrounding circumstances.

Approved in Robinson v. Bonaparte, 102 Md. 70, 61 Atl. 215, where testator directed trust to continue for twenty years after his death and death of wife and that trustees should apply rents to support of wife for life and after her death to support of children, trust continued for twenty years after death of widow; Darnell v. Lafferty, 113 Mo. App. 303, 88 S. W. 791, admitting parol evidence to show what animals referred to in memoranda of sale describing them as "ten head of cows and heifers."

Syl. 5 (VIII, 202). Limitations—Trustee closing trust.

Approved in Kansas City etc. Ry. Co. v. Stevenson, 135 Fed. 557, where defendant on resigning presidency of railroad retained title to property which had been donated to aid railroad, claiming it was his own, ten years' delay in enforcing trust bars right.

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18 Wall. 516-546, 21 L. 908, CHAFFEE v. UNITED STATES.

Syl. 2 (VIII, 204). Debt for recovery of statutory penalty.

Approved in In re Seagraves, 4 Okl. 433, 48 Pac. 275, since penalty provided for in Rev. St. U. S., § 2148, is recoverable in action of debt, one prosecuted criminally for violation of said act cannot be imprisoned until fine is paid.

Syl. 4 (VIII, 204). Judgment in debt for statutory penalty.

Approved in United States v. Chicago etc. Ry. Co., 143 Fed. 355, in joint actions against two or more railroads to recovery penalty for violation of Safety Appliance Act there may be recovery against all or any of defendants according to proofs.

Syl. 6 (VIII, 204). Entries in account-books as evidence.

Approved in Rosenthal v. McGraw, 138 Fed. 725, testimony of witness as to indebtedness based on his examination of charges in account-books which were not made by him is inadmissible.

Syl. 8 (VIII, 205). Burden of proof—Revenue penalties.

Approved in State v. Chicago etc. Ry. Co., 122 Iowa, 25, 26, 101 Am. St. Rep. 254, 96 N. W. 905, burden on state of proving that engineer was liable to penalty imposed by Code, § 2073, for failure to stop train before crossing intersecting railroad on same level, not shifted by proof that train did not stop; State v. Weckert, 17 S. D. 206, 95 N. W. 925, holding erroneous instruction in prosecution for larceny as casting burden that property was taken under honest claim of ownership on defendant.

18 Wall. 549-552, 21 L. 786, TACEY v. IRWIN.

Syl. 2 (VIII, 206). Tender of tax.

Distinguished in United States v. Ed. S. Hartwell Lumber Co., 142 Fed. 437, where at time of tendering entry of goods importers had no right to have it accepted, government not estopped because collector's refusal on wrong grounds misled importers into failing to renew tender on proper occasion.

18 Wall. 553-587, 21 L. 914, CASE OF SEWING MACHINE COS.

Syl. 2 (VIII, 208). Citizenship—Joint plaintiffs and defendants.

Approved in Sweeney v. Carter Oil Co., 199 U. S. 257, 50 L. 180, 26 Sup. Ct. 55, two citizens of different states may sue citizen of third state in district of latter's residence under act of 1887, as amended in 1888.

Syl. 8 (VIII, 209). Removal of causes—Joint parties.

Distinguished in Boatmen's Bank v. Fritzlen, 135 Fed. 664, 68 C. C. A. 288, where bill discloses separable controversies, and if, when parties are arranged upon opposite sides, either controversy is wholly between citizens of different states, suit is removable under act of 1887.

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18 Wall. 589-598, 21 L. 923, BULLARD v. NATIONAL EAGLE BANK.

Syl. 2 (VIII, 211). Implication from general words of statute.

Approved in Wilson v. Langhorne, 102 Va. 636, 47 S. E. 873, where testator devised realty to daughter in trust with remainder to children surviving her, but did not authorize trustee to make loans to remainderman, loan by trustee to remainderman does not charge his interest in estate with lien.

Syl. 3 (VIII, 211). National bank by-law—Lien on stock.

Approved in Third Nat. Bank v. Buffalo German Ins. Co., 193 U. S. 592, 48 L. 805, 24 Sup. Ct. 524, holding void national bank's by-law prohibiting transfer of stock of one indebted to bank without consent of directors; Bridges v. National Bank of Troy, 185 N. Y. 149, 77 N. E. 1006, where assignor in assignment for benefit of creditors was indebted to bank as indorser, and after assignment bank went into liquidation, in action by assignee against bank to recover assignor's distributive share of assets, assignor's debt to bank cannot be set off.

18 Wall. 626-628, 21 L. 938, DAVENPORT v. DOWS.

Syl. 1 (VIII, 214). Stockholder suing for corporation—Parties.

Approved in Doctor v. Harrington, 196 U. S. 588, 49 L. 610, 25 Sup. Ct. 355, fact that ultimate interest corporation defendant may be same as complaining stockholders' does not require alignment of corporation with complainants for purpose of federal jurisdiction where corporate control is antagonistic; Kidd v. New Hampshire Traction Co., 72 N. H. 286, 56 Atl. 469, 66 L. R. A. 574, stockholders in foreign corporation may sue for its property in state though it is not served with process in state and does not appear; Hearst v. Putnam Min. Co., 28 Utah, 196, 107 Am. St. Rep. 698, 77 Pac. 757, where corporation has sold property, stockholders cannot sue to cancel conveyance on ground of fraud giving right to trust in their favor. See 97 Am. St. Rep. 46, note.

18 Wall. 628, 629, 21 L. 813, ST. CLAIR COUNTY v. LOVINGSTON.

Syl. 2 (VIII, 215). What is final judgment.

Approved in Clement v. Wilson, 135 Fed. 750, 68 C. C. A. 387, order setting aside verdict and granting new trial is not final reviewable order.

18 Wall. 629-635, 21 L. 927, GRAY v. ROLLO.

Syl. 2 (VIII, 216). Bankruptcy—Setoff of debts.

Approved in In re Shults, 132 Fed. 575, solvent partnership indebted to bankrupt cannot set off against such indebtedness claim due from bankrupt estate to one of partners.

18 Wall. 635-642, 21 L. 866, BARTHOLOW v. BEAN.

Syl. 1 (VIII, 216). Bankruptcy—Payment as preference.

Approved in In re George M. Hill Co., 130 Fed. 319, 66 L. R. A. 68, payment to bank by insolvent within four months prior to bankruptcy

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of notes given to third person but which have been indorsed to bank is preference under Bankr. Act, § 60a; Capital Nat. Bank v. Wilkerson, 36 Ind. App. 479, 481, 75 N. E. 841, preference not affected by fact that at time of payment creditor held securities largely in excess of debt; Harris v. Second Nat. Bank, 110 Tenn. 245, 75 S. W. 1054, bankruptcy trustee is not precluded from recovering from payee in note money paid by bankrupt on note within four months of adjudication though there are solvent indorsers on note.

18 Wall. 648-657, 21 L. 966, HORNBUCKLE v. TOOMBS.

Syl. 1 (VIII, 217). Scope of territorial legislature's powers.

Approved in dissenting opinion in Allen v. Reed, 10 Okl. 132, 63 Pac. 869, majority holding void Stat. 1893, c. 23, relating to change of county seats.

Syl. 2 (VIII, 217). Territorial courts not federal courts.

Approved in Ex parte Moran, 144 Fed. 598, 604, upholding jurisdiction of circuit court of appeals to issue habeas corpus to determine power of territorial court to imprison one convicted of capital offense; Wallace v. Adams, 143 Fed. 725, upholding 32 Stat. 641, creating citizenship court empowered to review final judgments of United States courts under 29 Stat. 339, which had been affirmed by supreme court; Fuller v. Johnson, 8 Okl. 606, 58 Pac. 747, United States court of Indian territory is not "United States court" within meaning of Okl. St. 1890, p. 930, § 2.

Syl. 4 (VIII, 218). Rules of territorial court pleadings.

Approved in Cochran v. United States, 147 Fed. 207, on trial in territorial court of offense against federal law questions relating to severance and to peremptory challenges are determined by territorial laws; Jung v. Myer, 11 N. M. 389, 68 Pac. 937, holding void Laws 1901, c. 82, authorizing appeals to supreme court from interlocutory orders affecting substantial rights, as conflicting with Organic Act, § 10; Welty v. United States, 14 Okl. 13, 16, 76 Pac. 122, 123, in prosecution for murder committed on Indian reservation, defendant need not be served with list of jury and witnesses as provided by federal law; United States v. Choctaw etc. R. R. Co., 3 Okl. 453, 41 Pac. 746, in action where United States sues in interest of private parties as relators, defendant must file security for costs provided for by territorial laws.

(VIII, 217.) Miscellaneous. Cited in Alley v. Reed, 10 Okl. 111, 60 Pac. 784, holding void Statutes 1893, c. 23, relating to change of county seats.

18 Wall. 659-661, 21 L. 969, DAVIS v. BILSLAND.

Syl. 3 (VIII, 220). Priority of mechanics' over other liens.

Approved in dissenting opinion in Pacific States Savings etc. Co. v. Dubois, 11 Idaho, 336, 542, 83 Pac. 518, 521, majority holding where erection of building not done under contract, mortgage lien attaching

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prior to time that lien claimants commenced particular part of work or furnished material, takes precedence.

18 Wall. 670-674, 21 L. 852, HICKS v. KILSEY.

Syl. 1 (VIII, 220). Patents—Substitution of materials.

Approved in Sloan Filter Co. v. Portland Gold Min. Co., 139 Fed. 26, holding void Sloan patent No. 587,874, for barrel-filter for use in filtering precious metal solutions.

XIX WALLACE.

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19 Wall. 37-41, 22 L. 62, BULKLEY v. UNITED STATES.

Syl. 1 (VIII, 225). Profits as damages for breach of contract.

Approved in Brewster v. Lanyon Zinc Co., 140 Fed. 812, construing covenants in oil lease with reference to conditions for forfeiture; Choctaw etc. R. R. Co. v. Jacobs, 15 Okl. 500, 82 Pac. 504, refusing to allowing amount of commissions to be earned where freight delayed in delivery; Tootle v. Kent, 12 Okl. 691, 73 Pac. 315, in action by merchant for malicious acts of another causing depreciation in value of goods, measure of damages is difference between market value at time they were taken by defendant under chattel mortgage and value when property placed in hands of receiver; Chisholm etc. Mfg. Co. v. N. S. Canopy Co., 111 Tenn. 211, 77 S. W. 1064, allowing lost profits for breach of contract for manufacture and delivery of patent brackets known to be used by party for particular purpose.

19 Wall. 58-62, 22 L. 70, KNOWLES v. GASLIGHT ETC. CO.

Syl. 2 (VIII, 226). Foreign judgment—Showing lack of service.

Approved in National Exchange Bank v. Wiley, 195 U. S. 270, 49 L. 190, 25 Sup. Ct. 70, foreign judgment taken under warrant of attorney annexed to promissory note authorizing confession of judgment in favor of holder, is collaterally attackable on ground that party in whose favor it was rendered not real owner of note. See 103 Am. St. Rep. 309, note.

Distinguished in Cohen v. Portland Lodge 142, B. P. O. E., 140 Fed. 775, domestic judgment is not conclusive against one who, while made defendant, is not shown by record to have been served or to have appeared or defaulted.

19 Wall. 65-70, 22 L. 47, COOPER v. OMOHUNDRO.

Syl. 3 (VIII, 228). Conclusiveness of findings on waiver of jury.

Approved in West v. Houston Oil Co., 136 Fed. 350, 69 C. C. A. 169, where issue of fact is tried to court and no special findings made, suffi-

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ciency of evidence not reviewable; Streeter v. Sanitary Dist. of Chicago, 133 Fed. 126, 129, 130, 66 C. C. A. 190, in case trial to court where there are no special findings, ruling on request for holding that plaintiffs were entitled to recover amount claimed is not reviewable; Paul v. Delaware etc. R. Co., 130 Fed. 954, where motion to dismiss complaint was denied at close of evidence in action tried to court, correctness of ruling is reviewable on exceptions, without special findings.

19 Wall. 70-72, 22 L. 63, CREWS v. BREWER.

Syl. 1 (VIII, 228). Review where jury waived.

Approved in Streeter v. Sanitary Dist. of Chicago, 133 Fed. 126, 66 C. C. A. 190, following rule; Anglo-American Land etc. Co. v. Lombard, 132 Fed. 734, 68 C. C. A. 89, determining what is special finding.

19 Wall. 73-75, 22 L. 64, THE LUCILLE.

Syl. 1 (VIII, 229). New trial after appeal in admiralty.

Approved in The San Rafael, 141 Fed. 275, applying rule where libelants appealed though claimants did not.

19 Wall. 81-83, 22 L. 100, MORGAN'S EXECUTOR v. GAY.

Syl. 1 (VIII, 230). Suit by assignee—Diverse citizenship of assignor.

Approved in Utah-Nevada Co. v. De Lamar, 133 Fed. 122, 66 C. C. A. 179, denying federal jurisdiction over suit by assignee of oral contract to recover money due thereon where assignor could not sue in federal court.

19 Wall. 83-94, 22 L. 100, TOWN OF QUEENSBURY v. CULVER.

Syl. 1 (VIII, 231). Municipal railroad aid.

Approved in Donovan v. Pennsylvania Co., 199 U. S. 293, 50 L. 199, 26 Sup. Ct. 91, railroad which has arranged with transfer company to furnish at depot all vehicles necessary for passengers may exclude other hackmen from soliciting trade at depot.

19 Wall. 94-107, 22 L. 178, ROBERTSON v. CARSON.

Syl. 2 (VIII, 232). Mortgagor as party—Suit setting aside release.

Distinguished in York Co. Sav. Bank v. Abbot, 139 Fed. 993, suit in equity by lessee against nonresident lessor to enforce rights under lease by requiring defendant to elect to sell land to or buy house thereon from complainant, at appraised value, is not within jurisdiction of circuit court for district where property situated where defendant has not appeared.

(VIII, 232.) Miscellaneous. Cited in Wiemer v. Louisville Water Co., 130 Fed. 245, federal jurisdiction not affected by fact that complainant removed to state for purpose of acquiring right to sue in federal court of state of late residence where removal is with intent to acquire citizenship in new state.

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19 Wall. 107-125, 22 L. 72, REES v. CITY OF WATERTOWN.

Syl. 1 (VIII, 233). Taxing power exercised by legislative authority.

Approved in Kersey v. Terre Haute, 161 Ind. 474, 68 N. E. 1029, upholding ordinance imposing license tax on vehicles using streets though excluding automobiles, street-cars, and vehicles of nonresidents.

19 Wall. 125-138, 22 L. 148, THE PENNSYLVANIA.

Syl. 1 (VIII, 234). Collision—Steamer in fog should slacken speed.

Approved in Quinette v. Bisso, 136 Fed. 830, 69 C. C. A. 825, holding tug ascending Mississippi near New Orleans in dense fog at nine-knot speed liable for death of one run down while crossing river in skiff.

Syl. 3 (VIII, 235). Collision—Presumption of fault from violation of rule.

Approved in Kelley Island etc. Co. v. City of Cleveland, 144 Fed. 212, tug overtaking and passing steam scow without signals and without consent of overtaken vessel, contrary to rules and statute, is liable for grounding of scow due to suction caused by passing vessel; The Admiral Schley, 142 Fed. 67, holding both vessels at fault for collision in fog; Baltimore etc. Packet Co. v. Coastwise Transp. Co., 139 Fed. 779, holding vessel failing to sound fog signal as required by rules liable for collision; The Eagle Wing, 135 Fed. 832, applying rule where privileged vessel had unlicensed mate; The Admiral Cecille, 134 Fed. 677, vessel anchored in prohibited zone liable for collision though harbor master saw her anchored there and made no objection.

19 Wall. 146-167, 22 L. 105, SAWYER v. PRICKETT.

Syl. 1 (VIII, 237). Contracts—What is false representation.

Approved in Curran v. Smith, 149 Fed. 951, affirming Smith v. Curran, 138 Fed. 158, where engineers entered into contract to investigate project for pipe-line to supply water for purposes set forth in prospectus and if satisfactory to contract to construct line, they cannot defend for breach of contract on ground of false representations, where they had investigated project; Mather v. Barnes, 146 Fed. 1005, where as part of negotiations for sale of coal lands defendants represented that land was underlaid throughout entire line with vein of coking coal, but stated they were not much acquainted with land, representations not material; Pittsburg etc. Trust Co. v. Northern etc. Ins. Co., 140 Fed. 896, where, on sale of business and assets of life insurance company, list of balances against agents made and secretary said that they were better than ordinary, statement was merely expression of opinion; Kimber v. Young, 137 Fed. 749, 70 C. C. A. 178, applying rule in action for deceit in sale of corporate bonds.

Syl. 3 (VIII, 237). Bona fide holder—Note secured by mortgage.

Approved in Cudahy Packing Co. v. State Nat. Bank, 134 Fed. 546, 67 C. C. A. 662, mortgage securing note providing for payment of at-

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torney's fees in case note not paid at maturity passes free from equities to bona fide indorsee of note.

19 Wall. 167-177, 22 L. 109, CROPLEY v. COOPER.

Syl. 1 (VIII, 238). Bequest when legatee attains certain age.

Approved in Rhode Island Hospital Trust Co. v. Noyes, 26 R. I. 329, 341, 58 Atl. 1002, 1006, where under trust devise of stock from income of which sister should get annuity balance to be used for grandson until he attained age of twenty-five, when he should get balance of fund, less enough to pay annuity, and sister died before testator, grandson took vested interest, though he died before attaining age of twenty-five.

Syl. 3 (VIII, 238). Vested interest—Bequest on attainment of majority.

Approved in Atlee v. Bullard, 123 Iowa, 279, 98 N. W. 890, where there was devise to wife till youngest child of age, then to be sold and proceeds divided between wife and children, wife's share subject to partition judgment lien.

19 Wall. 198-214, 22 L. 41, UNITED STATES v. GAUSSEN.

Syl. 1 (VIII, 240). Treasury transcripts as evidence.

Approved in United States v. Pierson, 145 Fed. 817, 818, applying rule in action on bond of Indian agent.

19 Wall. 214-227, 22 L. 68, HOME LIFE INSURANCE CO. v. DUNN.

Syl. 3 (VIII, 242). Removal before final hearing.

Approved in Kentucky v. Powers, 139 Fed. 485, upholding right of removal of criminal prosecution where petitioner tried three times in state court and each conviction reversed, and on last two trials petitioner discriminated against in selection of jury.

19 Wall. 227-241, 22 L. 80, DOLLAR SAVINGS BANK v. UNITED STATES.

Syl. 2 (VIII, 244). Construction of provisos in statutes.

Approved in United States v. Schlierholz, 137 Fed. 618, special land department agent appointed under appropriation act, 30 Stat. 32, c. 2, was not officer of United States within Rev. St., § 5481, relating to extortion; Gould v. New York Life Ins. Co., 132 Fed. 930, under Bankr. Act, § 70, a title to insurance policy which has no surrender value and is payable to bankrupt's personal representatives does not pass to trustee.

Syl. 6 (VIII, 245). Government not bound by statutes unless mentioned.

Approved in Rochester v. Bloss, 185 N. Y. 50, 77 N. E. 796, under Laws 1903, p. 1187, c. 522, city in action for taxes due was limited to taxes spread on assessment-rolls without including percentages provided for in charter.

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Syl. 7 (VIII, 246). Debt to recover internal revenue taxes.

Approved in Phelps v. Brumback, 107 Mo. App. 26, 80 S. W. 680, under Kansas City Charter, art. 5, § 59, providing that if one claiming title under tax deed be defeated in suit for land conveyed by such deed, winner must pay claimant under deed amount paid at tax sale with interest, personal judgment may be had against successful claimant. See 101 Am. St. Rep. 150, 166, note.

19 Wall. 241-253, 22 L. 83, NUGENT v. SUPERVISORS.

Syl. 1 (VIII, 247). County railroad stock subscription—How made.

Approved in Red River etc. Co. v. Tennessee etc. R. R. Co., 113 Tenn. 716, 87 S. W. 1020, where railroad sought municipal subscription on condition that road be completed within two years from subscription and council directed mayor to subscribe, subscription completed when made by mayor and not at date of resolution.

Syl. 3 (VIII, 248). Consolidation of corporations—Effect on stock subscription.

Approved in Wright v. Minnesota etc. Ins. Co., 193 U. S. 664, 48 L. 836, 24 Sup. Ct. 549, reservation of right of amendment in articles of association of life insurance company empowers company to bind members by change from assessment plan to "old line" plan; Jones v. Missouri-Edison Elec. Co., 135 Fed. 156, 157, under Rev. St. Mo. 1899, § 1334, relating to consolidation of corporations, stockholders of one of constituent companies cannot sue in equity for relief, if relief prayed for must be enforced through company.

Distinguished in Jones v. Missouri-Edison Elec. Co., 144 Fed. 775, upholding right of minority stockholders in one of two consolidated corporations to equitable relief where consolidation obtained by fraud on holders of minority stock and abuse of fiduciary relations of trustees.

19 Wall. 287-419, 22 L. 125, MITCHELL v. TILGHMAN.

(VIII, 250.) Miscellaneous. Cited in Johnson v. Brafford, 114 Ky. 100, 70 S. W. 194, where complaint alleged breach of contract against nonresident defendant and claim against resident for infringement of right to make and sell patented article, court acquired no jurisdiction as against nonresident by service on resident in county and on nonresident in another county.

19 Wall. 433-468, 22 L. 116, KLEIN v. RUSSELL.

Syl. 5 (VIII, 252). Patents liberally construed.

Approved in Robins etc. Belt Co. v. American etc. Mach. Co., 145 Fed. 926, holding Robins' patent No. 571,604, for belt conveyer valid and infringed.

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19 Wall. 468-485, 22 L. 164, THE MAYOR OF NASHVILLE v. RAY.

Syl. 1 (VIII, 253). Municipal and private corporations distinguished.

Approved in Scott v. Laporte, 162 Ind. 43, 68 N. E. 280, city ordinance empowering private corporation to construct and maintain waterworks and binding city to pay large water rentals for twenty-one years to trustees of bondholders, city guaranteeing entire transaction, is void; State v. Butler, 178 Mo. 312, 77 S. W. 570, under St. Louis City Charter, art. 6, § 27, ordinance giving board of health power to contract for removal of city garbage is void; Territory v. Hopkins, 9 Okl. 147, 59 Pac. 980, county may refund bonds issued under Sess. Laws 1897, art. 2, c. 5.

Syl. 8 (VIII, 253). Municipality has no implied borrowing power.

Approved in White River Sav. Bank v. City of Superior, 148 Fed. 5, under charter of Superior, city not liable on bonds issued for street improvements and specifying property assessable for their payment; Luther v. Wheeler, 73 S. C. 90, 52 S. E. 876, where officers of town under resolution give note for money used for erection of public building, and note is afterward renewed by resolution, holder may recover of town amount received as money had and received.

Syl. 3 (VIII, 254). Charter method of raising money exclusive.

Approved in Scott v. Laporte, 162 Ind. 49, 69 N. E. 676, city ordinance empowering private concern to construct water system and binding city to pay large water rentals for twenty-one years to trustees of bondholders, and pledging city's taxing power to meet fixed charges, is void.

Syl. 4 (VIII, 254). Municipal power to issue negotiable paper.

Approved in Morrison v. Austin State Bank, 213 Ill. 484, 104 Am. St. Rep. 225, 72 N. E. 1113, warrants issued for local improvements, under Laws 1897, pp. 127, 133, are non-negotiable.

Syl. 5 (VIII, 256). Transferability of city warrants for claims.

Approved in Luther v. Wheeler, 73 S. C. 92, 52 S. E. 876, where town officers under resolution gave note for money used for erection of public building, and note is afterward renewed by resolution, holder may recover of town for money had and received.

Syl. 8 (VIII, 257). Municipal negotiable notes.

Approved in Luther v. Wheeler, 73 S. C. 91, 52 S. E. 876, where town officers under resolution gave note for money used for erection of public building and note is afterward renewed by resolution, holder may recover of town for money had and received.

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19 Wall. 486-490, 22 L. 67, UNITED STATES v. ARWO.

Syl. 1 (VIII, 258). Venue of assault on high seas.

Distinguished in Kerr v. Shine, 136 Fed. 64, 69 C. C. A. 69, under Rev. St., § 730, where one committed offense on high seas and vessel first touched at Hawaii, where complaint filed and warrant issued but not served until he landed in California, he is triable in California.

19 Wall. 490-505, 22 L. 189, TAPPAN v. MERCHANTS' NATIONAL BANK.

Syl. 1 (VIII, 258). Situs of personalty.

Approved in Union etc. Transit Co. v. Kentucky, 199 U. S. 202, 205, 50 L. 153, 154, 26 Sup. Ct. 36, due process of law is denied Kentucky corporation by Kentucky tax on its rolling stock located in other states and there employed in its business.

Syl. 2 (VIII, 259). Separation of situs of personalty for taxing purposes.

Approved in State v. Fidelity etc. Co., 35 Tex. Civ. 217, 220, 80 S. W. 546, 548, municipal bonds deposited with state treasurer by foreign corporation in order to do business in state, are taxable by state; Metropolitan Life Ins. Co. v. Board of Assessors, 115 La. 706, 39 So. 849, arguendo.

Syl. 4 (VIII, 259). State tax on bank shares of nonresidents.

Approved in Corry v. Baltimore, 196 U. S. 475, 476, 49 L. 561, 103 Am. St. Rep. 371, 25 Sup. Ct. 297, upholding Md. Code Pub. Gen. Laws, art. 81, imposing personal liability on nonresident stockholder in domestic corporation; State v. Fidelity etc. Co., 35 Tex. Civ. 221, 80 S. W. 548, municipal bonds deposited with state treasurer by foreign corporation as condition precedent to doing business in state are taxable by state.

Distinguished in Gilbertson v. Oliver, 129 Iowa, 572, 105 N. W. 1004, indebtedness to nonresident having no agent in state is not liable to inheritance tax under Code, § 1467.

19 Wall. 505-514, 22 L. 205, EX PARTE ROBINSON.

Syl. 1 (VIII, 260). Courts have inherent power to punish contempts.

Approved in Bessette v. W. B. Conkey Co., 194 U. S. 327, 48 L. 1001, 24 Sup. Ct. 665, circuit court of appeals may, under Comp. St. 1901, p. 547, § 6, review order of circuit court finding one not party to suit guilty of contempt in violating restraining order; Heinze v. Butte etc. Min. Co., 129 Fed. 277, 63 C. C. A. 388, where in equitable suit in aid of law action to recover for trespass to mining claim, defendant disobeyed order requiring him to permit plaintiff to examine mine to get evidence on issue, and he was fined

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for contempt, contempt order is not reviewable on writ of error; Smith v. Speed, 11 Okl. 113, 66 Pac. 517, 55 L. R. A. 402, judge in chambers may punish violation of injunction as contempt; Burke v. Territory, 2 Okl. 509, 37 Pac. 833, holding publication in newspaper charging that judge intended to withhold report of grand jury in effort to browbeat it is punishable as contempt, though contempt also a misdemeanor.

Syl. 2 (VIII, 261). Federal court's power to punish contempt.

Approved in Cuyler v. Atlantic etc. R. Co., 131 Fed. 96, under Rev. St., § 725, federal court cannot punish newspaper publisher for contempt consisting of editorial criticising official conduct and integrity of court; Burke v. Territory, 2 Okl. 516, 37 Pac. 835, holding newspaper publication charging that judge intended to withhold grand jury report in effort to browbeat jury is punishable as contempt.

Syl. 5 (VIII, 263). Notice necessary to disbar attorney.

Approved in In re Brown, 2 Okl. 596, 39 Pac. 471, defendant in disbarment proceeding may be cited to appear and answer within any time that gives him reasonable opportunity to be heard.

Syl. 6 (VIII, 263). Mandamus to restore disbarred attorney.

Distinguished in In re Brown, 2 Okl. 591, 39 Pac. 470, appeal lies to supreme court from order of district court suspending attorney pending trial for his disbarment.

(VIII, 260.) Miscellaneous. Cited in In re Branch, 70 N. J. L. 548, 57 Atl. 431, holding void P. L. 1903, p. 224, relieving registered law students who have served three-year clerkship from examination.

19 Wall. 526-531, 22 L. 160, HEAD v. THE UNIVERSITY.

Syl. 1 (VIII, 264). Removal of university professor.

Approved in Ward v. Board of Regents, 138 Fed. 377, 379, where regents of Kansas Agricultural College were authorized by statute to remove any professor whenever interests of college required, regents not liable for damages for discharging professor before termination of contract.

19 Wall. 544-547, 22 L. 183, BUTT v. ELLETT.

Syl. 1 (VIII, 265). Chattel mortgage of crop not sown.

Approved in Johnson v. Donohue, 113 Tenn. 450, 83 S. W. 361, where insolvent prior to bankruptcy assigned right to receive funds from railroad thereafter to accrue under contract, in consideration of pre-existing debt, assignee could enforce right to receive such funds, though debtor's right at time of assignment was contingent.

19 Wall. 563-572, 22 L. 184, WILLIAMS v. BANKHEAD.

Syl. 2 (VIII, 270). Who are indispensable parties.

Approved in Lynch v. United States, 13 Okl. 158, 73 Pac. 1101, where patent issued to entryman for townsite purposes and land

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plat and lots sold to many innocent purchasers, government cannot sue to cancel patent for fraud on part of entryman; Railroad Commission v. Palmer Hardware Co., 124 Ga. 637, 53 S. E. 195, arguendo.

Syl. 3 (VIII, 271). Proper and necessary parties distinguished.

Approved in Daimler Mfg. Co. v. Conklin, 145 Fed. 956, where bill for infringement of patent alleges that licensee has interest in patented invention which may be impaired by defendant's infringement, he may be joined as complainant.

19 Wall. 572-577, 22 L. 162, STEVENSON v. WILLIAMS.

Syl. 1 (VIII, 271). Removal must be before final judgment.

Approved in Katz v. Herschel Mfg. Co., 150 Fed. 685, action pending before justice of peace is removable to federal court on petition of nonresident defendant if requisite citizenship and amount in controversy exist.

19 Wall. 581-584, 22 L. 201, PEETE v. MORGAN.

Syl. 2 (VIII, 273). State tonnage duties for quarantine.

Approved in Way v. New Jersey Steamboat Co., 133 Fed. 192, Laws N. Y. 1897, p. 701, § 63, imposing tax on vessels entering harbor, computed on tonnage of vessel, is void.

19 Wall. 584-590, 22 L. 173, RAILROAD CO. v. RICHMOND.

Syl. 1 (VIII, 273). Contracts valid when made continue so.

Approved in Mottley v. Louisville etc. R. Co., 150 Fed. 412, upholding contract made prior to passage of 34 Stat. 584, by which, in consideration of release of damages, carrier contracted to issue passes to complainants for life.

Syl. 2 (VIII, 274). Object of congressional commerce power.

Approved in Howard v. Illinois Central R. Co., 148 Fed. 999, holding void employers' liability act of 1906; Davis v. Cleveland etc. Ry. Co., 146 Fed. 409, cars delivered to another railroad loaded with freight to be transported to other states and returned loaded or empty to owner in state where received, are not attachable under laws of state into which they are carried by other company; Grand Trunk etc. Ry. Co. v. Chicago etc. R. Co., 141 Fed. 802, holding contract by lessee railroad to run its trains and use terminal facilities of lessor during term of lease does not bind lessee to use tracks and facilities during term.

19 Wall. 591-594, 22 L. 210, UNITED STATES v. COOK.

Syl. 1 (VIII, 274). Indians have right of occupancy only.

Approved in Winters v. United States, 143 Fed. 748, grantees of public lands outside Ft. Belknap Indian reservation could acquire no exclusive right to waters of Milk river for irrigation under desert land act; United States v. Gardner, 133 Fed. 288, 66 C. C. A. 653,

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lands allotted to Indians in severalty subject to conditi
eral allotment act of 1887 remain property of United St
trust period and it may sue for timber wrongfully cut.

Syl. 2 (VIII, 275). Indians may cut timber for own u

Approved in King-Ryder Lumber Co. v. Scott, 73 Ark
W. 488, sale of timber by homesteader before receipt o
tificate, to carry out in good faith the acquisition of h
not void, though profit results from sale.

Distinguished in Richard v. Perrodin, 116 La. 447, 40
not inhabitant of Bellevue cannot cut timber on swamp

Syl. 3 (VIII, 275). Indians cannot cut timber to sell.

Approved in Labadie v. United States, 6 Okl. 422, 5
Indian cutting timber on Osage reservation for speculati
may be prosecuted under 25 Stat. 166.

Syl. 6 (VIII, 276). Government may sue for illegally

Approved in Peyton v. Desmond, 129 Fed. 6, 63 C. C.
entee under homestead laws may recover value of timber
cut from land between initiation of claim and issuance o

19 Wall. 606-611, 22 L. 187, HOLLADAY v. DAILY.

Syl. 1 (VIII, 277). Power to sell and convey—Execut

Approved in Kilpatrick v. Wiley, 197 Mo. 169, 95 S. W
ing contract for sale of lands entered into by broker to
power.

19 Wall. 611-618, 22 L. 203, PACKET COMPANY v. SI

Syl. 4 (VIII, 277). Measure of damages for patent i

Distinguished in Brown v. Lanyon, 148 Fed. 839, action
not be maintained for sole purpose of recovering profit
fringer of patent has made.

19 Wall. 646-655, 22 L. 219, WARREN v. VAN BRUNT.

Syl. 3 (VIII, 280). Conclusiveness of Land Department

Approved in Sage v. Rudnick, 91 Minn. 334, 100 N. W
ing pendency of controversy over railroad land grant i
partment, running of statute of limitations in favor of a
not suspended.

Syl. 4 (VIII, 280). Decision of Land Department—Sc
cial review.

Approved in Jones v. Hoover, 144 Fed. 220, holding
review acts of Land Department to give possession when
is essential for completion of purchase under statutes
disposition of public lands.

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19 Wall. 655-661, 22 L. 223, HEINE v. LEVEE COMMISSIONERS.

Syl. 1 (VIII, 281). Mandamus to compel tax levy to pay bonds.

Approved in Marra v. San Jacinto etc. Irr. Dist., 131 Fed. 789, where irrigation district organized under Cal. St. 1887, p. 29, sold bonds and holder thereof secured judgment on which execution returned unsatisfied, his remedy was to mandamus officers of district to levy assessment against property of district.

Syl. 2 (VIII, 282). Equity—Failure of legal remedy—Municipal bonds.

Approved in Marra v. San Jacinto etc. Irr. Dist., 131 Fed. 790, where irrigation district organized under Cal. St. 1887, p. 29, sold bonds, remedy of holder who has had execution on judgment returned unsatisfied is mandamus to compel levy of assessment and not suit for receivership; Folsom v. Greenwood Co., 130 Fed. 734, federal court cannot adjudge a county, which can only levy taxes for specified purposes, liable for payment of bonds issued by township before county was created and which was dissolved on its inclusion in county; Kersey v. Terre Haute, 161 Ind. 474, 68 N. E. 1029, upholding ordinance imposing license tax on vehicles using streets, though street-cars, automobiles and vehicles of nonresidents exempted.

Distinguished in Graham v. Folsom, 200 U. S. 252, 253, 50 L. 468, 469, 26 Sup. Ct. 245, mandamus lies to compel county auditor and treasurer to levy tax to pay judgment on township bonds, though township organization abolished.

19 Wall. 661-665, 22 L. 226, BOARD OF COMMISSIONERS v. GORMAN.

Syl. 1 (VIII, 283). Supersedeas as stay of execution.

Approved in Boston & M. R. Co. v. Gokey, 150 Fed. 687, where district court judgment affirmed by circuit court of appeals and mandate sent down, but defeated party applied to supreme court for certiorari, execution stayed by district court; Thalheim v. Camp Phosphate Co., 48 Fla. 195, 37 So. 525, Rev. St. 1892, § 1272, does not restore personalty previously levied on to possession of defendant in execution.

Syl. 2 (VIII, 284). Execution time runs from judgment entry.

Approved in In re McCall, 145 Fed. 901, where order overruling application for rehearing of order confirming bankrupt's composition entered on journal for October 10th, which contained indorsement by clerk, "Filed Oct. 10th," and direction of judge to enter order was dated October 16th, time for appeal ran from October 10th, as other date was clerical error.

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19 Wall. 666-679, 22 L. 227, TOWNSHIP OF PINE GROVE v. TALCOTT.

Syl. 1 (VIII, 284). Invalidity of statutes must be clear.

Approved in Hall v. Chicago etc. Ry. Co., 149 Fed. 566, query whether employer's liability act of 1906 is valid.

Syl. 4 (VIII, 285). Municipalities may aid railroads.

Approved in Donovan v. Pennsylvania Co., 199 U. S. 293, 50 L. 199, 26 Sup. Ct. 91, railroad which has contracted with transfer company to provide all vehicles necessary for use of passengers arriving at depot may exclude other cabmen from depot grounds; Detroit etc. R. R. Co. v. Campbell, 140 Mich. 387, 103 N. W. 857, where railroad contracted with individual to obtain for it right of way and construct remainder of road, authorizing him to take necessary steps to condemn land, he to defray expenses, he could maintain condemnation proceedings in name of railroad.

Syl. 5 (VIII, 285). Following state construction of constitution.

Approved in York v. Washburn, 129 Fed. 568, 569, 64 C. C. A. 132, whether or not oral contract for lease of realty for more than one year, not complying with statute of frauds of state where land lies, is nullity or voidable, is determinable according to state decisions.

Syl. 6 (VIII, 286). Taxation must be uniform.

Approved in State v. Chicago etc. R. R. Co., 195 Mo. 238, 93 S. W. 786, holding void Const. Amend. of 1900, authorizing county courts and township directors to levy road tax and exempting certain cities from operation of amendment; Pryor v. Bryan, 11 Okl. 364, 66 Pac. 350, upholding act exempting from taxation all property on Indian reservation attached to county for taxing purposes except for territorial or court funds, where property receives no benefit from other county funds.

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XX WALLACE.

20 Wall. 8-14, 22 L. 309, CREIGHTON v. KERR.

Syl. 1 (VIII, 288). General appearance waives defects in service.

Approved in Bentley v. Reid, 133 Fed. 702, 66 C. C. A. 528, where on petition being filed clerk failed to annex process so that same could be served for next term and court entered order directing service for succeeding term, and on such service defendant pleaded to merits, commencement of action for purpose of limitations was filing of petition; Norfolk etc. R. Co. v. Sutherland, 105 Va. 549, 54 S. E. 466, where defendant appeared when cause was remanded to rules to enable plaintiff to file amended declaration, service of summons to amended declaration is unnecessary.

20 Wall. 14-20, 22 L. 311, McQUIDDY v. WARE.

Syl. 2 (VIII, 289). Equitable relief refused for laches.

Approved in Ryason v. Dunten, 164 Ind. 96, 73 N. E. 77, where mother in possession as cotenant with son purchased land at foreclosure and obtained sheriff's deed, and son for several years after failed to assert rights, he cannot assert rights against mother's remote grantee for value.

20 Wall. 20-30, 22 L. 279, HUMASTON v. AMERICAN TELEGRAPH CO.

Syl. 1 (VIII, 290). Contract for arbitration binding.

Approved in Elberton Hardware Co. v. Hawes, 122 Ga. 866, 50 S. E. 967, where parties to executory agreement for sale of goods agree that price be fixed by values named, and one of valuers refuses to act, other cannot select valuer; Hopedale El. Co. v. Electric etc. Co., 184 N. Y. 363, 77 N. E. 396, where contract for sale of electric plant provided that if vendor's storage batteries should prove superior to vendees, it would pay certain sum as bonus based on percentage of superiority, and vendee refused to make test, damages recoverable are only nominal in absence of evidence of superiority.

Syl. 2 (VIII, 290). Act of vendee rendering performance impossible—Value.

Distinguished in Elbertson Hardware Co. v. Hawes, 122 Ga. 869, 50 S. E. 969, fact that one of parties to executory agreement for sale of goods under which valuers fix price is cause of refusal of one of valuers to act does not estop him from denying valuation made otherwise than according to agreement.

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20 Wall. 36-45, 22 L. 282, PACIFIC R. R. CO. v. MAGUIRE.

Syl. 2 (VIII, 292). Statutory tax exemption of railroad as contract.

Approved in State v. Chicago etc. Ry. Co., 128 Wis. 504, 108 N. W. 609, upholding statute imposing tax on gross earnings of railroad.

20 Wall. 64-72, 22 L. 315, OREGON STEAM NAVIGATION CO. v. WINSOR.

Syl. 1 (VIII, 294). Contract in restraint of trade is void.

Approved in Webb Press Co. v. Pierce, 116 La. 912, 41 So. 206, holding void contract whereby one contemplating to engage in business in certain place agrees with another not to do so.

Syl. 2 (VIII, 295). Contracts—What restraint of trade valid.

Approved in Merriman v. Cover, 104 Va. 436, 51 S. E. 819, upholding contract between firm procuring railroad right of way and owner that no oak bark be shipped over road except to owner, unless he refuses to take it at market price.

Syl. 3 (VIII, 295). Theory of invalidity of contracts restraining trade.

Approved in Cincinnati etc. Packet Co. v. Bay, 200 U. S. 185, 50 L. 433, 26 Sup. Ct. 208, purchaser of river boats cannot invoke anti-trust act as defense to action for purchase price though he agreed to maintain present rates which relate to domestic business; Cottington v. Swan, 128 Wis. 323, 107 N. W. 337, upholding contract whereby vendor of livery business agrees not to engage in livery business in same place so long as vendee or his heirs continue in business in same place.

Syl. 4 (VIII, 295). Facts determine invalidity of contract restraining trade.

Approved in Merica v. Burget, 36 Ind. App. 459, 75 N. E. 1086, agreement by vendor of bank to quit banking business and not to start bank in same town while vendee owns bank sold is broken by vendor subscribing to stock in new bank and acting as assistant cashier; Swigert v. Tilden, 121 Iowa, 662, 100 Am. St. Rep. 374, 97 N. W. 86, 63 L. R. A. 608, upholding sale of goodwill in mail order shirt business on agreement of seller not to engage in manufacture of shirts within one hundred miles of Des Moines nor sell shirts in Iowa and Nebraska for ten years, except as vendee's agent.

Syl. 5 (VIII, 295). Contracts partially restraining trade.

Approved in Hartman v. Park & Sons Co., 145 Fed. 380, system of contracts made by maker of proprietary medicine between him and wholesalers by which they are to sell only at certain price and to certain retailers and between him and retailers whereby they

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sell only at certain price, is valid; Fisheries Co. v. Lennen, 534, 65 C. C. A. 79, upholding agreement by which vendor es plant agreed not to engage in fish business in competi- vendee for twenty years.

(VIII, 297). Partial invalidity of contract restraining trade.

ed in Monongahela etc. Coke Co. v. Jutte, 210 Pa. St. 307, St. Rep. 812, 59 Atl. 1095, contract of sale of coal lands vendor not to engage in mining or shipping coal in certain for ten years is void as to territory outside of state, but so far as it relates to mining in state.

117-124, 22 L. 328, KNAPP v. RAILROAD CO.

(VIII, 301). Trustees may enforce claims.

ed in In re E. T. Kenney Co., 136 Fed. 455, beneficial in- assignors in net proceeds of claims against insolvent as- committee to purchase property of insolvent from receiver same for creditors, after administration of trust by com- ot provable in bankruptcy.

125-137, 22 L. 299, BURTON v. DRIGGS.

(VIII, 302). Assignment of grounds of inadmissibility of

ed in Graves v. Bonness, 97 Minn. 281, 107 N. W. 164, fol- ule; Brown v. United States, 142 Fed. 6, applying rule to to admission of account-books in prosecution for aiding bank president in misapplication of funds; Texas & P. Ry. ontourie, 135 Fed. 470, 471, 68 C. C. A. 177, applying rule against carrier for loss by fire of cotton while on com- ock.

(VIII, 303). Admission of copy of lost deposition—Absent

ed in Toledo Traction Co. v. Cameron, 137 Fed. 60, 61, 69 28, admitting testimony given at former trial where wit- action for personal injuries is outside jurisdiction of court les more than one hundred miles from place of trial; Brown ns, 131 Fed. 67, 65 C. C. A. 301, in action by distiller for axes illegally imposed, evidence that record-book taken from collector's office and then to revenue agent's office, and ch made for it only in latter office, is insufficient for ad- of parol evidence of contents.

(VIII, 304). Secondary evidence of papers in another state.

guished in Pringey v. Guss, 16 Okl. 83, 86 Pac. 293, secondary of contents of written contract not admissible where no shown to produce original last seen in possession of third

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Syl. 4 (VIII, 304). Proof of voluminous documents by examiner.

Approved in Schumacher v. Pima Co., 7 Ariz. 273, 64 Pac. 491, applying rule in action by county to recover money unlawfully paid as probate judge's salary where county board employed attorney to examine records; New La Junta etc. Canal Co. v. Kreybill, 17 Colo. App. 36, 67 Pac. 1029, permitting witness who had examined records of numerous deeds in various counties to state number of such deeds of record in those counties to show that deeds were of record at time of execution of deed of trust on property of party executing those deeds; State v. Nevada etc. R. R. Co., 28 Nev. 214, 81 Pac. 105, where on issue of earning capacity of railroad for tax purposes, books not introduced, but each party sought to prove result from them by opinion of expert, introduction of books waived; Sykes v. Beck, 12 N. D. 267, 96 N. W. 852, refusing evidence of attorney for plaintiff that he had examined records and that they did not contain anything with reference to certain tax levies.

Distinguished in In re Estate of Colton, 129 Iowa, 545, 105 N. W. 1009, admitting evidence of attorney who had examined records that there was no record of divorce decree between certain parties.

Syl. 5 (VIII, 305). Assumpsit for consideration of fraudulent assignment.

Approved in Johnson v. Cate, 77 Vt. 225, 59 Atl. 832, in action for money paid for goods purchased by firm for which plaintiff was agent, where defendant falsely informed plaintiff that firm had never paid, question of plaintiff's guaranty is immaterial.

20 Wall. 137-152, 22 L. 331, TIOGA ETC. RY. CO. v. BLOSSBURG ETC. RY. CO.

Syl. 1 (VIII, 305). Judgment as bar.

Approved in Georgia etc. Banking Co. v. Wright, 132 Fed. 916, where state supreme court in suit between state and railroad decided that charter precluded state from taxing company in excess of certain rate, decision concludes state in suit for taxes for different year under different statute.

Syl. 5 (VIII, 306). Foundation of law of limitations.

Approved in Sidway v. Missouri Land etc. Co., 187 Mo. 673, 86 S. W. 156, where foreign corporation was licensed in state and maintained office and agent for service of process it was not nonresident within Rev. St., § 4282, providing for suspension of limitations.

(VIII, 305.) Miscellaneous. Cited in Williams v. Metropolitan etc. Ry. Co., 68 Kan. 23, 74 Pac. 602, 64 L. R. A. 794, foreign corporation being "out of state" within meaning of Code, § 21, cannot avail itself of statute of limitations.

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20 Wall. 152-158, 22 L. 338, SIMPSON v. GREELEY.

Syl. 1 (VIII, 306). Joint parties must join in appeal.

Approved in Port v. Schloss Bros. & Co., 149 Fed. 732, following rule.

20 Wall. 165-171, 22 L. 252, ROACH v. SUMMERS.

Syl. 1 (VIII, 308). Discharge of surety by change in principal's contract.

Distinguished in Zeigler v. Hallahan, 131 Fed. 208, 66 C. C. A. 1, where defendant guaranteed lease by which tenant bound to keep and pay rent for premises and deliver them in good condition at end of term, insertion of clause in lease making it void if premises destroyed by fire, discharged surety.

20 Wall. 171-178, 22 L. 273, THIRD NATIONAL BANK v. COOPER.

(VIII, 308.) Miscellaneous. Cited in Bacon v. Roberts, 146 Fed. 730, dismissing petition to review order of bankruptcy referee filed fifty days after making of order.

20 Wall. 179-189, 22 L. 339, TWENTY PER CENT CASES.

Syl. 1 (VIII, 309). Retroactive construction of statutes.

Approved in Hall v. Chicago etc. Ry. Co., 149 Fed. 567, employers' liability act regulating liability of interstate carriers for injuries to employees does not apply to causes of action existing at time of its adoption.

20 Wall. 201-226, 22 L. 259, THE LOTTAWANNA.

Syl. 2 (VIII, 310). Maritime lien—Supplies furnished in home port.

Approved in The Sue, 137 Fed. 135, where local law gives lien for repairs or supplies furnished vessel in home port, no lien is acquired unless local law followed.

Syl. 7 (VIII, 311). Property following appeal in rem.

Approved in First Nat. Bank v. State Nat. Bank, 131 Fed. 431, 65 C. C. A. 414, where appeal is taken under Bankr. Act, § 25a, from judgment allowing or rejecting debt, district court cannot entertain motion for rehearing pending appeal.

20 Wall. 226-251, 22 L. 254, CORNETT v. WILLIAMS.

Syl. 4 (VIII, 311). Best possible secondary evidence—Certified copy.

See 110 Am. St. Rep. 456, note.

Syl. 5 (VIII, 312). Conclusiveness of judgment on collateral attack.

Approved in C. C. Taft Co. v. Century Sav. Bank, 141 Fed. 371, omission of petition in involuntary bankruptcy to allege that defendant owes debts amounting to $1,000 is jurisdictional defect; In re Burkell, 2 Alaska, 110, arguendo.

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Syl. 7 (VIII, 313). Official acts—Presumptions from other acts.

Approved in Brewster v. Lanyon Zinc Co., 140 Fed. 812, construing conditions in oil lease relating to forfeiture for failure to comply with covenants.

20 Wall. 251-264, 22 L. 275, UNITED STATES v. HERRON.

Syl. 3 (VIII, 314). Bankruptcy discharge—Debt due government.

Approved in Olds v. Forrester, 126 Iowa, 458, 102 N. W. 420, judgment for costs in criminal prosecution is satisfied by discharge of judgment debtor in bankruptcy.

20 Wall. 289-322, 22 L. 264, CITY OF MEMPHIS v. BROWN.

Syl. 2 (VIII, 316). Damages—Failure to return bonds under contract.

Approved in Barse Live Stock Co. v. McKinister, 10 Okl. 71, 64 Pac. 15, damages where property of defendant seized and delivered to plaintiff under writ are price at which he could have bought property in market nearest place at which he should have had possession.

Syl. 8 (VIII, 317). Damages must be legally computable.

Approved in Tootle v. Kent, 12 Okl. 691, 73 Pac. 315, allowing damages for loss of credit in action by merchant for malicious acts of another.

Distinguished in Critchfield v. Julia, 147 Fed. 72, where defendant in consideration of services rendered agreed to certain sum and certain preferred stock in corporation to be formed, but after formation of corporation did not issue such stock, plaintiff could recover sum equal to value of such stock if issued determinable with reference to value of corporation's assets and activities.

Syl. 10 (VIII, 317). Modification of city contract by officers.

Approved in Drainage Com. v. National Contracting Co., 136 Fed. 791, under Acts La. 1896, p. 162, §§ 5, 6, 7, relating to drainage, neither drainage commission nor its engineer could consent to substitution of cheaper material for that specified in contract.

20 Wall. 323-341, 22 L. 348, STOCKDALE v. ATLANTIC INSURANCE CO.

Syl. 2 (VIII, 317). Legislative construction of statutes.

Approved in James v. United States, 202 U. S. 406, 50 L. 1081, 26 Sup. Ct. 685, salary of District of Columbia supreme judges for year ending June 30, 1893, was $5,000, though appropriation for such year was sufficient to pay former salary only; American Sug. Ref. Co. v. United States, 136 Fed. 509, Cuban treaty of 1903, was retroactive and applied to Cuban goods imported ten days after ratifications exchanged, though Congress did not approve it till later.

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20 Wall. 353-375, 22 L. 241, HAILES v. VAN WORMER.

Syl. 1 (VIII, 319). Patents—New combination of old constituents.

Approved in Pennsylvania etc. Gaslight Co. v. Best, 137 Fed. 942, upholding Campbell patent No. 447,757, for method of using hydro-carbon fluids for illuminating purposes and incandescent lamp for using such method.

Syl. 2 (VIII, 319). Patents—Combining old devices.

Approved in American Chocolate Mach. Co. v. Helmstetter, 142 Fed. 980, Holmes' patent, No. 492,205, for chocolate dipping machine, consisting of combination with drop-dripping mechanism of jarring device for removing surplus, is not infringed by machine of Weeks' patent No. 634,633; Dodge Cold Storage Co. v. New York etc. R. R. Co., 139 Fed. 985, 986, 987, holding void Piez & Beaumont patents Nos. 668,960 and 688,111, for improvements in mechanism for piling coal and for removing material from pile; West Boylston Mfg. Co. v. Wallace, 137 Fed. 926, holding void Mitchelsen patent No. 718,499 for tenting cloth, for use in covering plants, as lacking novelty; Self-sealing Can Co. v. Hocker, 136 Fed. 420, holding void Spencer patent No. 412,134, for can top and cover; Voightmann v. Weis etc. Cornice Co., 133 Fed. 300, holding void Voightmann patent No. 600,186, for improvement in fireproof windows.

20 Wall. 375-384, 22 L. 383, FERRIS v. HIGLEY.

Syl. 1 (VIII, 321). Act organizing territory is its constitution.

Approved in Davidson v. Wampler, 29 Mont. 66, 74 Pac. 84, under Prob. Prac. Act, §§ 367, 369, guardian cannot mortgage ward's land to secure debt contracted for improvement of estate; Jung v. Myer, 11 N. M. 390, 68 Pac. 937, holding void Laws 1901, c. 82, authorizing appeals to supreme court from interlocutory orders affecting substantial rights.

Syl. 2 (VIII, 321). Territorial court's law and equity jurisdiction.

Approved in Christy v. City of Kingfisher, 13 Okl. 588, 76 Pac. 137, holding void act authorizing city council to hear and determine charges made ground for removal of officer and to enter order of removal but failing to provide for review in courts; dissenting opinion in Howe v. Dunlap, 12 Okl. 474, 72 Pac. 896, majority holding injunction will not lie to restrain mayor and council from recognizing as city attorney person elected as successor in office of person removed by council.

Syl. 3 (VIII, 322). Procedure in probate court.

Approved in State Capital etc. Co. v. Board of Commrs. of Grant Co., 8 Okl. 230, 56 Pac. 958, probate court has no jurisdiction over action to vacate judgment.

Syl. 4 (VIII, 322). Territorial law conferring jurisdiction on courts.

Approved in In re Bruno Munro, 1 Alaska, 283, 284, municipalities cannot create municipal courts independent of those created by Congress;

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Caron v. Old Reliable Gold Min. Co., 12 N. M. 222, 226, 78 Pac. 65, 67, probate court has no jurisdiction to determine contested claims of title to property as between an estate and stranger; Garrett v. London etc. Ins. Co., 15 Okl. 224, 81 Pac. 421, probate court has no jurisdiction to appoint receiver; Bardrick v. Dillon, 7 Okl. 551, 54 Pac. 790, enjoining tax levy on excess where board of equalization increased valuation of property of any individual in excess of its true cash value; Wetz v. Elliott, 4 Okl. 620, 51 Pac. 657, under Stat. 1893, c. 18, art. 15, §§ 1, 6, probate court had no jurisdiction over proceeding purely injunctional; Irwin v. Irwin, 2 Okl. 195, 37 Pac. 552, holding probate court has no jurisdiction in divorce; Bullerdick v. Hermsmeyer, 32 Mont. 551, 81 Pac. 336, arguendo.

Distinguished in Central Loan etc. Co. v. Campbell etc. Co., 5 Okl. 407, 409, 49 Pac. 51, 52, upholding Stat. 1893, §§ 4120, 4121, authorizing probate judge to issue attachment in cause pending in district court where district judge is absent from county; Irwin v. Irwin, 3 Okl. 202, 206, 41 Pac. 374, 375, under Stat. 1890, § 4966, probate courts could only grant divorces where petition and affidavit show plaintiff to have resided two years in territory and six months in county; Allison v. Bergers, 1 Okl. 8, 25 Pac. 513, county court has jurisdiction of civil suit for money demand of $310; dissenting opinion in Irwin v. Irwin, 2 Okl. 225, 37 Pac. 562, majority holding probate court has no jurisdiction over actions for divorce.

20 Wall. 385, 386, 22 L. 385, THE S. B. WHEELER.

Syl. 1 (VIII, 323). Admiralty—Concurrence of two courts.

Approved in The Iroquois, 194 U. S. 247, 48 L. 960, 24 Sup. Ct. 640, affirming concurring decisions of two lower courts that master of sailing vessel bound for San Francisco was bound to put in intermediate port for medical attendance for seamen who had broken ribs and leg while vessel rounding Cape Horn; Last Chance Min. Co. v. Bunker Hill etc. Co., 131 Fed. 588, 66 C. C. A. 299, refusing to disturb findings of master based on conflicting evidence when approved by court.

20 Wall. 387-403, 22 L. 354, NEW ORLEANS v. THE STEAMSHIP CO.

Syl. 1 (VIII, 323). Contempt is specific crime.

Approved in Heinze v. Butte etc. Min. Co., 129 Fed. 278, 280, 63 C. C. A. 388, where in suit in equity in aid of action at law injunction issued preventing defendant from extracting ore and order requiring them to permit plaintiff to examine mine was disobeyed, judgment fining defendant for contempt was not criminal judgment and not reviewable on error; In re Fellerman, 149 Fed. 246, two persons may be jointly proceeded against for contempt though it consists in false swearing before court; Bullock etc. Co. v. Westinghouse etc. Co., 129 Fed. 106, 107, 63 C. C. A. 607, circuit court judgment fining one for violating

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injunction is reviewable on writ of error; Christensen etc. Co. v. Westinghouse etc. Co., 129 Fed. 96, 97, 63 C. C. A. 598, order adjudging one in contempt for violating interlocutory injunction restraining patent infringement is not reviewable except on appeal from final decree in cause; State v. Harney, 30 Mont. 197, 76 Pac. 11, Code Civ. Proc., § 615, as amended, prohibiting change of venue where parties agree on judge pro tempore or if qualified district judge is called in does not apply to contempt proceedings.

Distinguished in In re Christensen Engineering Co., 194 U. S. 459, 48 L. 1074, 24 Sup. Ct. 729, circuit court of appeals has jurisdiction on writ of error to review circuit court order fining one for violating preliminary injunction in patent infringement suit.

Syl. 3 (VIII, 325). Review of circuit court judgment in contempt.

Distinguished in Bessette v. W. B. Conkey Co., 194 U. S. 331, 333, 48 L. 1003, 1004, 24 Sup. Ct. 665, circuit court of appeals may review order of circuit court fining one not party to suit for contempt in violating restraining order.

20 Wall. 414-420, 22 L. 389, MAYS v. FRITTON.

Syl. 1 (VIII, 326). Waiver of objection to state jurisdiction.

Approved in In re Reynolds, 133 Fed. 587, where, after adjudication in bankruptcy property of bankrupt taken possession of by chattel mortgage, and trustee sued in state court for value of property, he cannot thereafter bring summary proceedings in bankruptcy court to recover property.

Syl. 2 (VIII, 327). Objection must be taken below.

Approved in The Wyandotte, 145 Fed. 326, exhibits must be made part of record in admiralty appeal.

20 Wall. 430-445, 22 L. 391, THE MONTELLO.

Syl. 1 (VIII, 328). What are navigable streams.

Approved in Manigault v. Springs, 199 U. S. 478, 50 L. 277, 26 Sup. Ct. 127, where bill alleges that river is navigable stream, demurrer admits navigability; United States v. Roth, 2 Alaska, 261, Chena river is navigable stream; Minnesota Canal etc. Co. v. Koochiching Co., 97 Minn. 441, 107 N. W. 409, Gen. Laws 1901, c. 360, p. 579, do not authorize corporation to divert waters from navigable stream so as to interfere with navigation and by means of canal discharge it into different drainage area; State v. Twiford, 136 N. C. 606, 48 S. E. 587, navigability not affected by fact that one riparian owner owns lands on both sides of stream with no public road to water.

Syl. 2 (VIII, 329). When river navigable water of United States.

Approved in Birch v. King, 71 N. J. L. 394, 59 Atl. 11, plea to jurisdiction averring that cause of action arose on navigable waters and is

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exclusively within federal jurisdiction is bad as not showing that waters were navigable waters of the United States.

20 Wall. 445-459, 22 L. 365, HOME INSURANCE CO. v. MORSE.

Syl. 2 (VIII, 330). Agreement not to remove suit.

Approved in Victor Talking Mach. Co. v. American Graph. Co., 140 Fed. 862, prior agreement by which parties to suit for infringement of patent agree on terms of settlement on condition that patent is sustained does not deprive court of jurisdiction; Hartford Fire Ins. Co. v. Hon, 66 Neb. 556, 562, 103 Am. St. Rep. 725, 92 N. W. 747, 749, 60 L. R. A. 436, holding void stipulation in fire insurance policy that no action thereon shall be brought until after compliance with stipulation as to appraisement and arbitration; dissenting opinion in Prewitt v. Security etc. Ins. Co., 119 Ky. 342, 343, 346, 84 S. W. 530, 531, and dissenting opinion in Security etc. Ins. Co. v. Prewitt, 202 U. S. 260, 261, 50 L. 1019, 1020, 26 Sup. Ct. 619, majority upholding Kentucky statute providing that foreign insurance company removing suit to federal court shall have license to do business in state revoked.

Distinguished in Security etc. Ins. Co. v. Prewitt, 202 U. S. 254, 255, 50 L. 1017, 26 Sup. Ct. 619, affirming Prewitt v. Security etc. Ins. Co., 119 Ky. 327, 330, 331, 83 S. W. 612, 613, and upholding Kentucky statute providing that foreign insurance company removing suit to federal court shall have license to do business in state revoked.

Syl. 5 (VIII, 332). Insurance—Agreement not to remove suits.

Approved in Pearson v. Anderburg, 28 Utah, 500, 80 Pac. 309, members of voluntary association cannot restrict themselves to remedies before society's tribunals with reference to benefits due under contract, so as to require them to exhaust remedy provided for by society's tribunals as condition precedent to suing for benefits; dissenting opinion in Security etc. Ins. Co. v. Prewitt, 202 U. S. 258, 263, 264, 265, 50 L. 1019, 1020, 1021, 26 Sup. Ct. 619, majority upholding Kentucky statute providing that foreign insurance company removing suit to federal court shall have license to do business in state removed; Knight v. Shelton, 134 Fed. 440, arguendo.

Distinguished in Security etc. Ins. Co. v. Prewitt, 202 U. S. 249, 251, 252, 50 L. 1015, 1016, 26 Sup. Ct. 619, upholding Kentucky statute providing that foreign insurance company removing suit to federal court shall have license to do business in state revoked.

20 Wall. 459-474, 22 L. 371, SPROTT v. UNITED STATES.

Syl. 2 (VIII, 334). Validity of acts of insurgent states.

Approved in Cullins v. Overton, 7 Okl. 482, 54 Pac. 705, where Texas authorities organized disputed territory into county, judgment of its county court, rendered prior to adjudication that such territory was not in Texas, is valid.

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20 Wall. 486-488, 22 L. 375, BOLEY v. GRISWOLD.

Syl. 1 (VIII, 335). Judgment in replevin.

Distinguished in Hynes v. Barnes, 30 Mont. 27, 75 Pac. 523, under Code Civ. Proc., § 1193, judgment for plaintiff in claim and delivery must be in alternative.

20 Wall. 488-494, 22 L. 395, HEARNE v. MARINE INS. CO.

Syl. 1 (VIII, 336). Equity—Reformation of contracts for fraud.

Approved in Taylor v. Grand Lodge A. O. U. W., 96 Minn. 452, 105 N. W. 413, where laws of beneficial society prohibited admission of persons over forty-five and applicant over such falsely certified to contrary and paid dues for long time and lodge knew nothing of falsity of certificate till after his death, claim for benefits was denied.

Syl. 3 (VIII, 337). Reformation of contract—Mutual mistake.

Approved in Forester v. Van Auken, 12 N. D. 182, 96 N. W. 303, holding evidence insufficient to show deed intended as mortgage.

Syl. 5 (VIII, 337). Usage to explain ambiguity.

Approved in Brewster v. Lanyon Zinc Co., 140 Fed. 812, construing oil lease with reference to conditions of forfeiture; Lillard v. Kentucky Distilleries etc. Co., 134 Fed. 182, 67 C. C. A. 74, admitting evidence of custom to show that contract for delivery of distillery slop at distiller's feeding lot contemplated lot to be supplied with suitable pens, troughs and pipes.

Distinguished in Moore v. United States, 196 U. S. 166, 49 L. 433, 25 Sup. Ct. 202, custom at San Francisco between shippers and ship owners requiring consignee to designate berth for discharge of cargo does not prevail over terms of contract to deliver coal at wharf in Honolulu, where different custom prevails; Connecticut Fire Ins. Co. v. Buchanan, 141 Fed. 889, 890, refusing parol evidence to show that parties to insurance policy intended to cover building while used for purpose other than that specified in policy.

20 Wall. 498-507, 22 L. 410, RUBBER TIP PENCIL CO. v. HOWARD.

Syl. 1 (VIII, 338). Patents—Device useful but not new.

Distinguished in Thomson-Houston El. Co. v. Ohio Brass Co., 129 Fed. 379, upholding Van Deopoele patent No. 394,039, for insulated turnbuckle for use on trolley-cars.

20 Wall. 507-516, 22 L. 414, ATCHISON v. PETERSON.

Syl. 2 (VIII, 338). Riparian rights—Use of water for mining.

Approved in Morris v. Bean, 146 Fed. 426, failure to record claim for water does not preclude taking of water for beneficial uses by methods other than in statutes prescribed; Revenue Min. Co. v. Balderston, 2 Alaska, 368, denying unreasonable monopoly of waters on public lands where one undertakes to unfairly deprive another from using them;

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Boise Irr. etc. Co. v. Stewart, 10 Idaho, 50, 77 Pac. 28, upholding and construing Sess. Laws 1903, p. 223, regulating appropriation and diversion of public waters; Clark v. Allaman, 71 Kan. 213, 240, 80 Pac. 574, 583, determining rights of appropriators for irrigation as against riparian owners; Crawford Co. v. Hathaway, 67 Neb. 360, 108 Am. St. Rep. 675, 93 N. W. 793, irrigation acts of 1889 and 1895 did not abolish vested rights of riparian owners; Willey v. Decker, 11 Wyo. 520, 100 Am. St. Rep. 939, 73 Pac. 216, owner of land in Montana may by prior appropriation acquire right to use of water of stream rising in that state and flowing into Wyoming, by joining with land owners in Wyoming in construction of ditch to divert waters at point in latter state for irrigation of lands in both states.

Distinguished in Meng v. Coffee, 67 Neb. 509, 510, 108 Am. St. Rep. 704, 705, 93 N. W. 716, denying right of riparian owners to divert waters of stream for irrigation purposes to detriment of other riparian owners.

Syl. 4 (VIII, 339). Water—Rights conferred by appropriation.

Approved in Revenue Min. Co. v. Balderston, 2 Alaska, 369, denying unreasonable monopoly of waters on public lands where one unreasonably seeks to unfairly prevent another from using them; Stenger v. Tharp, 17 S. D. 22, 94 N. W. 404, determining amount of water which one riparian owner, as against another such owner, may appropriate for irrigation.

20 Wall. 517-520, 22 L. 421, UNITED STATES v. GILL.

Syl. 1 (VIII, 340). Government's liability—Hay used by army.

Approved in United States v. Foreman, 5 Okl. 253, 48 Pac. 97, one suing in territorial court for recovery of money paid for land on which entry erroneously allowed afterward canceled need not show surrender of duplicate receipt and execution of disclaimer as provided in act of June 16, 1880.

20 Wall. 520-527, 22 L. 376, POLLARD v. BAILEY.

Syl. 4 (VIII, 341). Remedy and liability created by same statute.

Approved in Middletown Nat. Bank v. Toledo etc. Ry. Co., 197 U. S. 405, 49 L. 810, 25 Sup. Ct. 462, stockholder's liability in Ohio corporation is not enforceable outside of state; Harrigan v. Gilchrist, 121 Wis. 268, 99 N. W. 948, creditor may sue receiver of corporation to enforce trust.

Syl. 6 (VIII, 342). Remedy—Stockholder's liability act.

Approved in Harrison v. Remington Paper Co., 140 Fed. 388, holding void as against contract rights accrued prior to its passage, Laws Kan. 1898, c. 10, p. 27, substituting for existing remedy suit in equity by receiver appointed after judgment against corporation; Hazlett v. Woodhead, 27 R. I. 511, 63 Atl. 954, to enforce stockholder's liability in banking corporation imposed by Neb. Const., 1875, art. 11b, § 7, receiver must include nonresident stockholders in equity suit in Nebraska;

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Miller v. Smith, 26 R. I. 150, 58 Atl. 635, 66 L. R. A. 473, refusing to entertain suit in equity by creditors of Colorado corporation, on behalf of themselves and others who may choose to come in, against stockholder to enforce double liability under 1 Mills Ann. St. Colo. § 533.

20 Wall. 528-543, 22 L. 406, NORTHWESTERN UNION PACKET CO. v. CLOUGH.

Syl. 4 (VIII, 344). Declarations by agent of past occurrences.

Approved in The Saranac, 132 Fed. 942, in action against vessel for injury to stevedore by falling down hatchway, statement of mate ten minutes after accident that hatch covers never did fit is inadmissible; Allington etc. Mfg. Co. v. Detroit Reduction Co., 133 Mich. 436, 95 N. W. 565, in action by seller for price of machine sold to corporation in which defense of breach of warranty set up, admissions of director not binding on corporation; Havens v. Rhode Island Suburban Ry. Co., 26 R. I. 53, 58 Atl. 249, in action against railway for injuries to conductor through negligence of motorman, evidence that on day after accident, manager told barn foreman that motorman was incompetent, is inadmissible; Gosa v. Southern Ry., 67 S. C. 362, 45 S. E. 816, in action for personal injuries declaration of bystander after accident are not part of res gestae.

Syl. 5 (VIII, 345). Bill of exceptions must show prejudicial error.

Approved in O'Keefe v. Dillenbeck, 15 Okl. 441, 83 Pac. 541, applying rule in ejectment.

20 Wall. 543-545, 22 L. 422, UNITED STATES EXPRESS CO. v. WARE.

Syl. 2 (VIII, 346). Service on agent of foreign corporation.

Approved in Sidway v. Missouri Land etc. Co., 187 Mo. 673, 86 S. W. 156, where foreign corporation was licensed to do business in Missouri and had process agent there it was not nonresident within Rev. St. 1899, § 4282, providing for suspension of limitations.

20 Wall. 546-559, 22 L. 403, AMBLER v. WHIPPLE.

Syl. 1 (VIII, 346). Dissolution of partnership—Written contract.

Distinguished in Jenkins etc. Co. v. Alpena etc. Cement Co., 147 Fed. 657, where parties to verbal agreement for sale of cement contemplate its reduction to writing and signature, but writing was simply to be memorial of agreement, contract is binding though never written.

20 Wall. 575-577, 22 L. 451, LONGSTREETH v. PENNOCK.

Syl. 1 (VIII, 349). Bankruptcy—Seizure of property liable to distraint.

Approved in In re Winfield Mfg. Co., 137 Fed. 986, where after tenant's bankruptcy landlord accepted surrender of premises, he cannot enforce stipulation in lease that in case tenant becomes bankrupt rent for entire term should become due.

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20 Wall. 577-583, 22 L. 417, CANNON v. NEW ORLEANS.

Syl. 1 (VIII, 349). State mooring fee is tonnage tax.

Approved in Way v. New Jersey Steamboat Co., 133 Fed. 192, holding void Laws N. Y. 1897, p. 701, § 63, imposing tax on master, owner or consignee of vessel entering port, based on tonnage; Board of Commissioners of New Orleans v. New Orleans etc. R. Co., 112 La. 1014, 36 So. 838, after creation of port commissioners, city of New Orleans could not authorize construction of railroad on wharves along Mississippi.

Syl. 3 (VIII, 351). State regulation of wharfage fees.

Approved in State v. Faudre, 54 W. Va. 123, 102 Am. St. Rep. 927, 46 S. E. 269, 63 L. R. A. 877, Ohio may fix charge for ferriage over Ohio river to West Virginia.

20 Wall. 590-642, 22 L. 429, MURDOCK v. CITY OF MEMPHIS.

Syl. 2 (VIII, 353). Repeal of act by implication.

Approved in State v. Lee, 28 Nev. 391, 82 Pac. 230, Stat. 1899, p. 88, c. 73, regulating practice of medicine, is repealed by Stat. 1905, p. 87, c. 63; Pratt Institute v. City of New York, 183 N. Y. 158, 75 N. E. 1121, 1 Gen. Tax Law, 1896, p. 908, § 4, subd. 7, exempting real estate of educational institutions used exclusively for carrying out corporate purposes, repeals special charter provisions granting such exemption.

Syl. 7 (VIII, 355). Appeal—Looking into opinion below.

Approved in Carson v. Three States Lumber Co., 142 Fed. 894, following rule.

Syl. 8 (VIII, 355). Affirmance—Federal question correctly decided.

Approved in Hamburg-American S. S. Co. v. Lennan, 194 U. S. 628, 48 L. 1157, 24 Sup. Ct. 857, following rule.

(VIII, 353.) Miscellaneous. Cited in Ex parte Anderson, 46 Tex. Cr. 390, 81 S. W. 982, city court has no jurisdiction to try one accused of violation of state penal statute.

20 Wall. 650, 651, 22 L. 448, CADLE v. BAKER.

Syl. 1 (VIII, 358). Questioning legality of receiver's appointment.

Approved in Threadgill v. Colcord, 16 Okl. 462, 85 Pac. 708, one who has filed petition asking receiver's appointment, and who is purchaser at sale, is estopped from questioning appointment of receiver.

20 Wall. 652, 22 L. 449, TREAT v. JEMISON.

Syl. 1 (VIII, 358). Sufficiency of assignments of error.

Approved in Ward v. Sherman, 7 Ariz. 278, 64 Pac. 435, assignment which does not distinctly point out grounds of error relied on is insufficient.

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20 Wall. 655-670, 22 L. 455, CITIZENS' SAVINGS AND LOAN ASSOCIATION v. TOPEKA.

Syl. 2 (VIII, 359). Municipal authority to incur debt—Taxes.

Approved in Rose v. McKie, 145 Fed. 591, granting mandamus to compel levy of tax by town to pay judgment against it; Manning v. City of Devils Lake, 13 N. D. 51, 99 N. W. 52, city cannot issue bonds for construction of bridge outside of city limits.

Syl. 3 (VIII, 360). Municipal right to contract limited—Tax power.

Approved in Farmers' etc. Trust Co. v. Sioux Falls, 131 Fed. 903, where city granted to water company exclusive privilege of maintaining water-pipes in streets for twenty years, it cannot construct its own waterworks after expiration of term, if it has no power to so invest its funds.

Syl. 6 (VIII, 361). Constitutional law—Rights uncontrollable by state.

Approved in McKinster v. Sager, 163 Ind. 680, 106 Am. St. Rep. 268, 72 N. E. 858, 68 L. R. A. 273, holding void Acts 1903, p. 276, c. 153, making sales of stock by merchant not in due course of business void as to creditors who sold stock, unless schedule of creditors, etc., published.

Syl. 7 (VIII, 361). Powers of government limited.

Approved in Ex parte Anderson, 46 Tex. Cr. 390, 81 S. W. 981, city court cannot try one accused of violation of state penal statute; dissenting opinion in Allen v. Reed, 10 Okl. 133, 63 Pac. 870, arguendo.

Syl. 9 (VIII, 362). Taxes must be for public purpose.

Approved in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 252, 49 L. 467, 25 Sup. Ct. 251, proceeding in eminent domain authorized by Ky. St., §§ 835-839, is removable to federal court where requisite diverse citizenship exists; King v. Hatfield, 130 Fed. 583, holding void Const. W. Va., art. 13, §§ 3, 6, vesting title to lands forfeited for noncharging of taxes thereon and vesting title in others; McRae v. Cohise Co., 5 Ariz. 34, 44 Pac. 301, holding void Laws 1889, p. 35, requiring supervisors to offer reward for person digging first artesian well in county; Scott v. La Porte, 162 Ind. 48, 68 N. E. 282, city ordinance empowering water company to construct waterworks and binding city to pay water rentals for twenty-one years to trustees of company's bondholders, and pledging city's taxing power to meet such fixed charges, is void; Castner v. City of Minneapolis, 92 Minn. 86, 87, 99 N. W. 361, city cannot reimburse defeated candidate for expenses involved in recount of ballots in election contest; Minnesota Sugar Co. v. Iverson, 91 Minn. 39, 97 N. W. 456, holding void Laws 1899, p. 389, c. 307, providing bounty on sugar made from beets grown in state.

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Distinguished in dissenting opinion in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 260, 49 L. 471, 25 Sup. Ct. 251, majority holding condemnation proceedings authorized by Ky. St., §§ 835-839, are removable to federal court where diverse citizenship exists.

20 Wall. 670-686, 22 L. 452, BASEY v. GALLAGHER.

Syl. 2 (VIII, 366). Abolishing distinction between forms of action.

Approved in Chessman v. Hale, 31 Mont. 585, 79 Pac. 256, plaintiff in action for damages for maintenance of nuisance is entitled to jury trial as to damages, though injunction also asked; Crawford Co. v. Hathaway, 67 Neb. 360, 108 Am. St. Rep. 675, 93 N. W. 793, irrigation acts of 1889 and 1895 did not abolish vested rights of riparian owners; Schumacher v. Crane-Churchill Co., 66 Neb. 443, 92 N. W. 610, order transferring action in ejectment to equity docket because of equitable defenses does not preclude trial by jury of legal issues.

Syl. 5 (VIII, 367). Appropriation of water rights.

Approved in Morris v. Bean, 146 Fed. 426, failure to record claim for water does not preclude taking of water for beneficial uses of methods other than in statute prescribed; Revenue Min. Co. v. Balderston, 2 Alaska, 368, denying unreasonable monopoly of waters on public lands where one undertakes to unfairly deprive another from using them; Boglino v. Giorgetta, 20 Colo. 345, 78 Pac. 614, where abandoned bed of river patented by government, another cannot acquire right of way for water over such land; Miles v. Butte Elec. etc. Co., 32 Mont. 66, 79 Pac. 553, under Comp. St. 1887, div. 5, §§ 1250-1257, claimant of water must show diversion of water claimed to have been appropriated, that he constructed work to convey water for beneficial use, and that he owned land described in notice; Willey v. Decker, 11 Wyo. 520, 100 Am. St. Rep. 939, 73 Pac. 216, owner of land in Montana may by prior appropriation acquire right to use of water of stream rising in that state and flowing into Wyoming, by joining with land owners in Wyoming in construction of ditch to divert waters at point in that state to irrigate lands in both states.

Syl. 6 (VIII, 368). Water rights of occupants of public lands.

Approved in Meng v. Coffee, 67 Neb. 518, 108 Am. St. Rep. 712, 93 N. W. 719, appropriation of water by squatter's rights does not give settler, who has appropriated water in that way for less than ten years, exclusive right as against other settlers on same stream.

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XXI WALLACE.

21 Wall. 1-17, 22 L. 499, THE LADY PIKE.

Syl. 1 (VIII, 370). Admiralty appeals—Concurrence of two divisions.

Approved in The Iroquois, 194 U. S. 247, 48 L. 960, 24 Sup. Ct. 640, applying rule to findings that master of bark bound for California was bound to put into intermediate port for surgical aid for seaman injured while breasting Cape Horn; Last Chance Min. Co. v. Bunker Hill etc. Concen. Co., 131 Fed. 588, 66 C. C. A. 299, findings of master depending on conflicting evidence and approved by trial court not disturbed on appeal.

Syl. 2 (VIII, 370). Collision—Master must know dangers.

Approved in The Joseph Peene, 130 Fed. 490, holding tug liable for injuries to tow caused by floating ice where tug left to drift in channel while tug delivered other tow.

21 Wall. 17-33, 22 L. 515, JEROME v. McCARTER.

Syl. 4 (VIII, 372). Finality of action on appeal bond.

Approved in Clarke v. Eureka Co. Bank, 131 Fed. 146, where supersedeas bond accepted and writ of error allowed and citation issued, motion to increase bond is within exclusive jurisdiction of appellate court.

21 Wall. 33-36, 22 L. 476, DOANE v. GLENN.

Syl. 1 (VIII, 373). Time for objections to defects in deposition.

Approved in Columbus Ry. Co. v. Patterson, 143 Fed. 246, applying rule where notarial certificate to deposition misstates name of witness.

21 Wall. 36-41, 22 L. 527, GARDNER v. BROWN.

Syl. 2 (VIII, 373). Foreclosure trust deed—Trustee as party.

Approved in In re E. T. Kenney Co., 136 Fed. 455, where creditors of bankrupt before bankruptcy assigned claims to committee to purchase bankrupt's property and sell same for their benefit, they were not entitled to prove equitable interest against bankrupt estate.

21 Wall. 41-43, 22 L. 476, VANNEVAR v. BRYANT.

Syl. 1 (VIII, 374). Removal by nonresident defendant.

Distinguished in Boatmen's Bank v. Fritzlen, 135 Fed. 664, 68 C. C. A. 288, if, when parties to separable controversies have been ar-

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ranged upon opposite sides according to facts, either controversy is between diverse citizens, suit is removable.

Syl. 2 (VIII, 374). Removal pending motion for new trial.

Approved in Kentucky v. Powers, 139 Fed. 485, removing criminal case where defendant had been convicted three times and each conviction reversed and had been discriminated against in selection of jurors.

21 Wall. 44-65, 22 L. 551, SCHULENBERG v. HARRIMAN.

Syl. 2 (VIII, 376). Adverse possession—Presumption from plaintiff's possession.

Approved in dissenting opinion in Morgan v. Jackson, 32 Ind. App. 177, 69 N. E. 412, majority holding ownership or right of possession in replevin plaintiff and possession of defendant do not change plaintiff's burden to show that defendant wrongfully holds possession.

Syl. 3 (VIII, 376). Railroad grant—Conveyance before completion.

Approved in Knepper v. Sands, 194 U. S. 481, 48 L. 1085, 24 Sup. Ct. 744, Comp. St. 1901, p. 1595, protecting bona fide purchasers of railway grant which had been erroneously patented, does not apply to one purchasing after passage of act unearned lands title to which was resumed by state on railroad's default.

Syl. 4 (VIII, 377). Grant to state for railroad in praesenti.

Approved in Sage v. Rudnick, 91 Minn. 331, 100 N. W. 107, grant of 1867 to Hastings etc. R. R. Co. passed legal title on filing map of definite location; dissenting opinion in Sage v. Rudnick, 91 Minn. 328, 98 N. W. 90, majority holding that time during which right of plaintiff's grantor under land grant was in litigation in Land Department does not count in determining whether right to recover land is barred by adverse possession.

Syl. 8 (VIII, 381). Nonperformance of condition subsequent.

Approved in Capen v. Sheldon, 78 Vt. 47, 61 Atl. 866, where condition, in town charter granting land to proprietors, that each shall improve share within time fixed, on penalty of forfeiture, is broken, estate not defeated until state asserts forfeiture.

Syl. 9 (VIII, 382). Assertion of breach of condition subsequent.

Approved in Rannels v. Rowe, 145 Fed. 301, mere execution and recording of another deed to third person by grantors in prior deed, after original deed recorded, and without notice to grantee therein does not forfeit first deed for breach of condition subsequent where no possession taken.

Syl. 13 (VIII, 384). Remedies for illegal cutting of timber.

Approved in Peyton v. Desmond, 129 Fed. 6, 63 C. C. A. 651, where facts stated and relief demanded show that action is to recover

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value of lumber made from trees wrongfully cut from plaintiff's land, action is transitory.

21 Wall. 73-97, 22 L. 528, HAMILTON v. DILLIN.

Syl. 1 (VIII, 387). Tax on goods brought from rebel states.

Approved in Lincoln v. United States, 202 U. S. 498, 50 L. 1119, 26 Sup. Ct. 728, duties on imports to Manila which were not authorized by Presidential order of July 12, 1898, were not ratified by Comp. St., Supp. 1905, p. 391.

Syl. 3 (VIII, 387). War—Tax on imports from rebel states.

Distinguished in Lincoln v. United States, 197 U. S. 429, 49 L. 819, 25 Sup. Ct. 455, existence of insurrection in Philippines did not justify exaction of duties on imports for United States.

21 Wall. 105-111, 22 L. 481, COOPER v. COATES.

Syl. 1 (VIII, 388). Erroneous admission of cumulative evidence.

Approved in Brown v. United States, 142 Fed. 4, applying rule in prosecution for aiding national bank officer in misapplication of bank funds.

21 Wall. 112-119, 22 L. 566, SMITH v. NICHOLS.

Syl. 2 (VIII, 388). Patents—Disclaimer after suit commenced.

Approved in Sample v. American Soda Fountain Co., 134 Fed. 403, where patentee files disclaimer in patent office during pendency of infringement suit which has been heard on appeal, circuit court may grant rehearing.

Syl. 6 (VIII, 389). Patents—Extended application of original.

Approved in New York Belting etc. Co. v. Sierer, 149 Fed. 769, holding void Furness & Watts patent No. 527,961 for tile floors or walls, consisting of interlocking and removable tiles; Thomas v. St. Louis etc. R. Co., 149 Fed. 755, holding void Thomas patent No. 570,148, for car truss; Bullock Elec. Mfg. Co. v. General Elec. Co., 149 Fed. 419, holding void Rust patent No. 508,637, for improvement in armature cores; Voightmann v. Weis etc. Cornice Co., 148 Fed. 853, holding void Voightmann patent No. 600,186, for automatically closing fireproof window; American Graphophone Co. v. Universal etc. Mfg. Co., 145 Fed. 643, holding void Jones patent No. 688,739, for method of producing sound records for talking machines; Streit v. Kaiper, 143 Fed. 984, holding void Street patent No. 668,268, for footrest for chairs; Van Epps v. United Box etc. Paper Co., 143 Fed. 878, holding Victory patent No. 417,451, for pulp screening machine valid but limited by prior art; American Carriage Co. v. Wyeth, 139 Fed. 391, holding void Wyeth patent No. 400,381, for sleigh-runner for wheeled vehicles; Sloan Filter Co. v. Portland Gold Min. Co., 139 Fed. 26, holding void Sloan patent No. 587,874, for barrel filter for using in filtering precious metal solutions;

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Capewell v. Goldsmith, 138 Fed. 685, holding void Capewell patent No. 630,972, for stick-pin retainer; North Jersey St. Ry. Co. v. Brill, 134 Fed. 584, 67 C. C. A. 380, holding void Brill patents Nos. 627,988 and 627,900, for car trucks for electric cars.

21 Wall. 130-138, 22 L. 588, DUPASSEUR v. ROCHEREAU.

Syl. 1 (VIII, 393). Removal—Refusal to uphold foreign judgment.

Approved in Mathew v. Wabash Ry. Co., 115 Mo. App. 481, 81 S. W. 648, where, in action for injuries to passenger, defendant alleged train was interstate train and was equipped with couplers and brakes required by interstate commission and that such equipment increased hazard, federal question raised.

21 Wall. 138-147, 22 L. 609, VERMILYE v. ADAMS EXPRESS CO.

Syl. 2 (VIII, 395). Rights of purchaser of overdue notes.

Distinguished in Gardner v. Beacon Trust Co., 190 Mass. 29, 76 N. E. 456, 2 L. R. A. (N. S.) 767, where owner of overdue note secured by mortgage assigns it, so as to enable assignee to deal with it, though obtained by fraud, as if he were owner, bona fide purchaser takes it free from equities of original owner.

Syl. 3 (VIII, 395). Treasury notes—Usage of banks.

Approved in Cudahy Packing Co. v. State Nat. Bank, 134 Fed. 545, 67 C. C. A. 662, provision for payment of attorneys' fees in case note is not paid at maturity does not destroy negotiability.

Syl. 5 (VIII, 395). Rights of assignee of owner of stolen notes.

Approved in Gardner v. Beacon Trust Co., 190 Mass. 30, 76 N. E. 456, 2 L. R. A. (N. S.) 767, where owner of overdue note secured by mortgage assigns it, so as to enable transferee to deal with it as his own, though obtained by fraud, bona fide purchaser takes it free from equities of original owner.

(VIII, 394.) Miscellaneous. Cited in Singer v. Merchants etc. Transp. Co., 191 Mass. 455, 77 N. E. 883, carrier's agent who delivered goods to one whose name was same as that of consignee is not chargeable with knowledge that consignor had several times a year for several years sent goods through same company addressed in same way.

21 Wall. 152-157, 22 L. 593, AMERICAN LIFE INSURANCE CO. v. MAHONE.

Syl. 1 (VIII, 396). Insurance—Parol showing misstatement by agent.

Distinguished in Connecticut Fire Ins. Co. v. Buchanan, 141 Fed. 891, where policy insured building while it is occupied for certain purpose, parol evidence that it was intention of parties that insurance should cover building while vacant is inadmissible.

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Syl. 2 (VIII, 397). Misstatements by agent in insurance application.

Approved in Home Forum Benefit Order v. Jones, 5 Okl. 610, 50 Pac. 169, under by-laws of beneficial society providing that local lodge may receive applications for benefit certificates which are sent to grand secretary for approval of grand medical examiner, approval is essential to validity of certificate.

Distinguished in Deming Inv. Co. v. Shawnee Fire Ins. Co., 16 Okl. 11, 83 Pac. 921, fact that agent who wrote application knew condition of title is no defense where application misstates facts.

21 Wall. 158-162, 22 L. 511, SPRINGFIELD FIRE ETC. INSURANCE CO. v. LEA.

Syl. 4 (VIII, 400). Conclusiveness on appeal of findings of fact.

Approved in Streeter v. Sanitary Dist. of Chicago, 133 Fed. 126, 66 C. C. A. 190, applying rule in action on contract.

21 Wall. 162-178, 22 L. 627, MINOR v. HAPPERSETT.

Syl. 1 (VIII, 401). Women as citizens.

Approved in Gordon v. Yost, 140 Fed. 80, where wife is deserted by husband, she may become resident and citizen of different state from him for purposes of federal jurisdiction.

Syl. 2 (VIII, 401). Meaning of "citizen" in constitution.

Approved in South Carolina v. United States, 199 U. S. 450, 50 L. 265, 26 Sup. Ct. 110, government may exact liquor revenue license from dispensing agent of state which has taken charge of liquor business; Kepner v. United States, 195 U. S. 126, 49 L. 123, 24 Sup. Ct. 797, Act of 1902, § 5, for government of Philippines took away right of government to appeal from acquittal in Philippine court of first instance; Schick v. United States, 195 U. S. 69, 49 L. 102, 24 Sup. Ct. 826, one prosecuted by information in district court under oleomargarine act (Comp. St. 1901, p. 2228) may waive jury; Cronly v. Tucson, 6 Ariz. 238, 56 Pac. 877, holding void Laws 1897, Act No. 76, § 2, providing that at every city election every taxpayer, without regard to sex, shall be entitled to vote.

Syl. 4 (VIII, 402). Fourteenth amendment adds no rights to citizens.

Approved in Pope v. Williams, 98 Md. 71, 103 Am. St. Rep. 379, 66 L. R. A. 398, 56 Atl. 545, upholding Laws 1902, c. 133, p. 204, providing that no one coming into state can vote till one year after declaration of intention to become voter; State v. Webber, 96 Minn. 430, 105 N. W. 493, upholding Const. Amend. 1895 to art. 7, § 1, limiting right of suffrage as respects naturalized citizens to such as are admitted three months prior to election.

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Syl. 5 (VIII, 403). Suffrage not coextensive with citizenship.

Approved in Pope v. Williams, 193 U. S. 632, 48 L. 822, 24 Sup. Ct. 573, upholding Md. Laws 1902, c. 133, requiring persons coming into state to reside to make declaration of intention of becoming citizens and residence as condition precedent to registration. See 103 Am. St. Rep. 386, note.

(VIII, 401.) Miscellaneous. Cited in Ex parte Anderson, 46 Tex. Cr. 389, 81 S. W. 981, city court has no jurisdiction to try one accused of violation of state penal statute.

21 Wall. 178-185, 22 L. 482, MARSH v. WHITMORE.

Syl. 2 (VIII, 404). Agent buying at principal's sale.

Approved in In re Castle Braid Co., 145 Fed. 230, where contract by corporation to purchase directors' stock was assented to by stockholders, and it was made to settle dissension among stockholders, and stock assigned, prima facie case to establish claim in bankruptcy shown; Burns v. Cooper, 140 Fed. 277, sale of ward's realty by guardian under order of court may be set aside where guardian procured sale of property for purpose of acquiring title; Young v. City of Mankato, 97 Minn. 6, 105 N. W. 970, 3 L. R. A. (N. S.) 849, board of freeholders, appointed to draft city charter, cannot employ one of its members as counsel for board; Barnes v. Lynch, 9 Okl. 186, 59 Pac. 1007, setting aside agreement between officers of corporation between themselves to divide assets of corporation among themselves; Nabours v. McCord, 97 Tex. 533, 80 S. W. 598, where assignee for creditors guaranteed purchaser of assets that he would secure resale of stocks at cost and stock was assigned by buyer, at assignee's direction, to A, from whom assignee borrowed purchase price, and A's check turned into estate, transaction was voidable by creditors.

Syl. 4 (VIII, 406). Laches—Allegations excusing delay.

Approved in Kansas City etc. Ry. Co. v. Stevenson, 135 Fed. 557, where president of railroad, on resigning, retains property donated to aid railroad, claiming it as his own, delay of nine years in suing to enforce trust is laches; Patterson v. Hewitt, 11 N. M. 41, 66 Pac. 564, 55 L. R. A. 658, applying rule to action to enforce alleged rights under agreement relating to mining rights.

21 Wall. 185-196, 22 L. 504, ADAMS v. ADAMS.

Syl. 7 (VIII, 407). When creation of trust complete.

Approved in Allen-West Com. Co. v. Grumbles, 129 Fed. 294, 63 C. C. A. 401, where owner of shares in corporation delivered assignment of its business to wife, but retained certificates and received dividends and later indorsed certificates, assignment was incomplete gift.

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21 Wall. 196-205, 22 L. 612, GARRISON v. CITY OF NEW YORK.

Syl. 1 (VIII, 408). Contracts—Judgment on transaction lacking assent.

Approved in Gaffney v. Jones, 39 Wash. 589, 81 Pac. 1059, holding valid Laws 1897, p. 52, c. 39, providing that after expiration of six years after rendition judgment shall cease to be lien, as applied to judgment in tort rendered prior to act.

Syl. 8 (VIII, 410). No vested rights in judgments.

Approved in Wallace v. Adams, 143 Fed. 726, upholding 32 Stat. 641, creating citizenship court empowered to review final judgments of federal courts under 29 Stat. 339, which had been affirmed by supreme court.

21 Wall. 205-230, 22 L. 577, LITTLEFIELD v. PERRY.

Syl. 3 (VIII, 410). Jurisdiction—Patent infringement—Construction of contract.

Approved in Harrington v. Atlantic etc. Telegraph Co., 143 Fed. 330, 336, upholding jurisdiction over suit for infringement, though reconveyance of patents transferred under trust agreement also sought.

Syl. 5 (VIII, 411). Patent infringement—Licensee as plaintiff.

Approved in Wooster v. Crane, 147 Fed. 516, owner of equitable title to copyright may sue in own name for infringement when holder of legal title is one of infringers.

Syl. 12 (VIII, 412). Patents—Assignment of imperfect invention.

Distinguished in Bobbs-Merrill Co. v. Straus, 147 Fed. 26, where copyrighted copies sold in which notice printed that retail price was $1, and that no one authorized to sell for less, resale at less price not enjoined; National Cash Register Co. v. New Columbus Watch Co., 129 Fed. 116, 63 C. C. A. 616, registration of instrument which does not convey present interest in patent for which application is pending is not notice to assignee of patent subsequently applied for.

21 Wall. 235-240, 22 L. 617, EX PARTE SAWYER.

Syl. 5 (VIII, 416). Control over order against appeal sureties.

Distinguished in Perriam v. Pacific Coast Co., 133 Fed. 143, 66 C. C. A. 206, sureties on stipulation in admiralty for release of libeled vessel need not be joined in appeal by claimant, though decree is joint in form against claimant and stipulators.

21 Wall. 241-249, 22 L. 632, TILDEN v. BLAIR.

Syl. 3 (VIII, 416). Law governing drafts.

Cited in Nashua Savings Bank v. Sayles, 184 Mass. 522, 100 Am. St. Rep. 573, 69 N. E. 310, arguendo.

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21 Wall. 255-264, FLORIDA RAILROAD CO. v. SMITH.

Syl. 2 (VIII, 419). Contracts—Setoff of damages for defects.

Approved in Michigan Yacht etc. Co. v. Busch, 143 Fed. 936, applying rule in action to recover money paid on contract for construction of boat.

Syl. 6 (VIII, 420). Bridge contract—Implied warranty of fitness.

Approved in Hunter v. Porter, 10 Idaho, 86, 77 Pac. 439, where agreement for lease refers to building as "cold storage building," and restricts its use to storage of such articles as are ordinarily stored in such places, implied warranty of fitness for such use arises.

21 Wall. 264-272, 22 L. 556, SOUTHERN EXPRESS CO. v. CALDWELL.

Syl. 1 (VIII, 420). Contract limiting carriers' liability.

Approved in Broom v. Western Union Tel. Co., 71 S. C. 509, 51 S. E. 259, holding stipulation on printed telegraph blank requiring claims for damages to be presented within sixty days from filing of message valid and binding on recipient of message; Chesapeake etc. Ry. Co. v. Beasley, 104 Va. 793, 3 L. R. A. (N. S.) 183, 52 S. E. 567, under Va. Code 1904, § 1294c, subsec. 25, carrier cannot make contract limiting liability.

Syl. 7 (VIII, 423). Contract fixing time limit to present claim.

Approved in Spinks v. Mutual etc. Life Assn., 137 Fed. 170, upholding provision in insurance policy that no action shall be brought after lapse of one year from insured's death; Broom v. Western Union Tel. Co., 71 S. C. 511, 51 S. E. 260, holding stipulation on printed telegraph blank requiring claims for damages to be presented within sixty days from filing of message valid and binding on recipient of message.

21 Wall. 272-275, 22 L. 614, BUTLER v. UNITED STATES.

Syl. 1 (VIII, 424). Surety—Agreement to add new names.

Approved in Rollins v. Ebbs, 138 N. C. 146, 50 S. E. 579, where sureties signed guardian's bond with penalty omitted and intrusted it to another for delivery, and bond was filed with penalty inserted, sureties estopped to assert invalidity of bond because of omission of penalty.

21 Wall. 276-284, 22 L. 536, YONLEY v. LAVENDER.

Syl. 2 (VIII, 425). Following state administration laws.

Approved in Schurmeier v. Connecticut etc. Ins. Co., 137 Fed. 45, 69 C. C. A. 22, action at law for allowance of contingent claim against estate of decedent cannot be maintained in federal court after time limited by court under state statute.

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Syl. 3 (VIII, 426). Nonresident creditor of estate—Federal court.

Approved in Thiel Detective etc. Co. v. McClure, 130 Fed. 57, 58, unsecured creditor of decedent having legal demand not reduced to judgment cannot sue in federal court to compel executor to account.

Syl. 4 (VIII, 427). Federal court—Judgment against estate.

Approved in Cheshire Prov. Inst. v. Anglo-American etc. Co., 132 Fed. 969, 66 C. C. A. 122, judicial proceedings on petition of bank commissioners, under Pub. St. N. H. 1901, c. 162, for winding up bank do not dissolve corporation at once so as to preclude judgment against it by federal court.

21 Wall. 284-288, 22 L. 651, BAILEY v. CLARK.

Syl. 3 (VIII, 428). Legislative construction of statutes.

Approved in Wetmore v. Markoe, 196 U. S. 77, 49 L. 394, 25 Sup. Ct. 172, discharge in bankruptcy does not bar collection of arrears in alimony and allowance for support of children due under divorce decree; Johnson v. Southern Pac. Co., 196 U. S. 21, 49 L. 371, 25 Sup. Ct. 158, equipment of locomotive and diner with automatic couplers of such different type as not to couple with each other automatically does not satisfy Comp. St. 1901, p. 3174.

21 Wall. 289-294, 22 L. 634, TERRELL v. ALLISON.

Syl. 1 (VIII, 428). Mortgages—Writ of assistance.

Approved in Daggs v. Wilson, 6 Ariz. 395, 59 Pac. 153, following rule.

Syl. 4 (VIII, 429). Writ of assistance—Against whom issued.

Approved in Fox v. Stubenrauch, 2 Cal. App. 94, 83 Pac. 84, where on application for writ of assistance by purchaser at foreclosure it appeared that another claimed title under deed made by one of defendants in foreclosure pendente lite, his tenant cannot plead title to defeat writ; Merrill v. Wright, 65 Neb. 796, 101 Am. St. Rep. 645, 91 N. W. 698, one in possession in good faith under void tax deed cannot be dispossessed under writ of assistance.

21 Wall. 302-310, 22 L. 539, JENNISONS v. LEONARD.

Syl. 3 (VIII, 430). Time when of essence of contract—Installments.

See 104 Am. St. Rep. 270, note.

Syl. 4 (VIII, 430). Installment payments—Title.

Approved in Brooke v. Eastman, 17 S. D. 347, 96 N. W. 701, interest of one who has made first payment and received contract of sale of school lands from land commissioners is subject to execution.

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21 Wall. 325-342, 22 L. 542, CLARION BANK v. JONES.

Syl. 1 (VIII, 432). Bankruptcy note as preference—Immediate execution.

Approved in In re Pease, 129 Fed. 453, where trust company, through its attorney, who also represented other creditors of merchants, made loan to him with which certain creditors, including clients of attorney, paid in full, and next day company sold out merchant's stock under chattel mortgage which secured loan, transaction was fraudulent preference.

21 Wall. 342-350, 22 L. 636, BAILEY v. GLOVER.

Syl. 2 (VIII, 434). Purpose of bankruptcy act.

Approved in Clendening v. Red River etc. Bank, 12 N. D. 60, 94 N. W. 904, in action by bankruptcy trustee to recover preferences, order of referee permitting defendant to return certain preferences and allowing defendant's claim for balance was adjudication that items to be retained were not preferences.

Syl. 3 (VIII, 435). Limitations—Relief against fraud.

Approved in Little v. Holley etc. Hardware Co., 133 Fed. 880, 67 C. C. A. 46, under Bankr. Act, §§ 3b, 60a, 60b, four months' period of limitation as against preferential transfer which was neither fraudulent nor required to be registered runs from date of transfer; Arkins v. Arkins, 20 Colo. App. 128, 77 Pac. 258, where complaint alleged defendant was plaintiff's agent, claim not barred by six year limitation where knowledge of fraud not obtained by plaintiff till shortly prior to suit; dissenting opinion in Atchison etc. Ry. Co. v. Grain Co., 68 Kan. 597, 75 Pac. 1055, majority holding in action for violation of verbal agreement stipulating against discriminations, averment that defendant succeeded in concealing fact of such discriminations from plaintiff until eighteen months prior to filing suit does not postpone limitations.

Distinguished in Pietsch v. Milbrath, 123 Wis. 668, 107 Am. St. Rep. 1017, 102 N. W. 345, fraud, though concealed, does not suspend limitations in cases not within statute.

21 Wall. 350-353, 22 L. 584, MITCHELL v. UNITED STATES.

Syl. 2 (VIII, 437). Domicile defined.

Approved in Pope v. Williams, 98 Md. 67, 103 Am. St. Rep. 379, 66 L. R. A. 398, 56 Atl. 544, upholding Acts 1902, p. 204, c. 133, providing that no one coming from another state may register as voter until one year after declaration of intention to become voter; Humphrey v. Humphrey, 115 Mo. App. 363, 91 S. W. 405, where plaintiff after marriage came with husband to this state and lived here with husband for two years, her mere absence, after his desertion, without intention to make home elsewhere, does not preclude divorce suit in this state.

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Syl. 3 (VIII, 438). Domicile presumed to continue.

Approved in Gaddie v. Mann, 147 Fed. 956, where it is shown that complainant is native of certain state, and that his home and family are there, presumption of citizenship in such state not overcome by showing that he has been for large part of time in another state on business, and that he once voted there at primary.

Syl. 4 (VIII, 438). Essentials to acquisition of new domicile.

Approved in Sun Printing etc. Assn. v. Edwards, 194 U. S. 383, 48 L. 1030, 24 Sup. Ct. 696, averment of citizenship in Delaware is sufficient for purposes of federal jurisdiction, where it is shown that plaintiff had domicile there and that absence from state was without intention to abandon domicile.

21 Wall. 354-360, 22 L. 645, HOTCHKISS v. NATIONAL BANKS.

Syl. 4 (VIII, 439). Purchaser of note—Suspicion of defect.

Approved in First Nat. Bank v. Moore, 148 Fed. 957, following rule; Fillebrown v. Hayward, 190 Mass. 480, 77 N. E. 47, where director sold stock to another knowing that sale gave him control of company and payments on stock made by his check signed as treasurer, seller not charged with notice that treasurer was misappropriating corporate funds; dissenting opinion in Williams v. Neily, 134 Fed. 18, 67 C. C. A. 171, 69 L. R. A. 232, majority holding purchaser for value from creditor, the obligation of debtor, who takes latter's note, payable to himself with full knowledge of consideration thereof and of facts relating to original transaction, takes note subject to defenses against original creditor.

Syl. 5 (VIII, 440). Purchaser of note before maturity—Defects.

Approved in First Nat. Bank v. Moore, 148 Fed. 958, following rule; In re Troy & Cohoes Shirt Co., 136 Fed. 433, fact that party discounting notes knew that president and treasurer of corporation who made notes were also members of firm for whose accommodation they were made, did not charge him with notice of their true character; Massachusetts National Bank v. Snow, 187 Mass. 163, 72 N. E. 960, note payable to bearer, taken from thief, is valid in hands of holder in due course.

21 Wall. 360-378, 22 L. 568, CLARK v. ISELIN.

Syl. 1 (VIII, 440). Pledgee putting collateral in pledgor's hands.

Distinguished in Ryttenberg v. Schefer, 131 Fed. 323, where parties attempted by agreement to give one factor's lien on other's property but possession remained in debtor, equitable lien does not arise.

Syl. 2 (VIII, 441). Bankruptcy—Exchange of pledged collateral.

Approved in English v. Ross, 140 Fed. 635, under Bankr. Act, § 60a, as amended in 1903, trustee may set aside preference given within four months as evidence by date of its record, irrespective of date of delivery; Bush v. Export Storage Co., 136 Fed. 928, 930, where

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manufacturer leased warehouse space to warehouse companies which was used by latter for storage of materials purchased by former and warehouse company issued receipts therefor which manufacturer pledged, pledge carried title to property though materials used up and others substituted therefor.

21 Wall. 389-398, ATLEE v. NORTHWESTERN PACKET CO.

Syl. 3 (VIII, 445). Boom erected by riparian owner.

Approved in United States v. Evans, 195 U. S. 365, 49 L. 237, 25 Sup. Ct. 46, upholding admiralty jurisdiction over libel in rem against vessel for colliding with beacon standing in water, though built on piles; Bowers Hyd. D. Co. v. Federal Cont. Co., 148 Fed. 294, upholding admiralty jurisdiction over suit for hire of dredge generally used for maritime purposes though temporarily used for partly land transaction in dredging stream; Sutter v. Heckman, 1 Alaska, 88, owner of uplands bordering on sea in Alaska has no title to tide lands in front of his property.

Syl. 5 (VIII, 446). Admiralty—Damages where both at fault.

Approved in The Steam Dredge No. 1, 134 Fed. 167, 69 L. R. A. 292, 67 C. C. A. 67, ordering division of damages where inspector on dredge injured by breaking of bitt through negligence of operator where inspector also negligent.

21 Wall. 430-440, 22 L. 673, DILLON v. BARNARD.

Syl. 1 (VIII, 448). Equity—Matters admitted by demurrer.

Approved in Hume v. Laurel Hill Cemetery, 142 Fed. 563, holding void ordinance prohibiting burials in San Francisco.

Syl. 3 (VIII, 450). Railroad mortgage—Lien of contractor.

Approved in Johnston v. Huff, 133 Fed. 706, 66 C. C. A. 534, where railroad contractor gave supply firm order on railroad which was not presented for one year and only one day before bankruptcy, it was preference; Missouri Pac. Ry. Co. v. Bradbury, 106 Mo. App. 458, 79 S. W. 968, where railroad was granted right of way, laid track and then abandoned same, rails became property of grantor.

21 Wall. 441-453, 22 L. 623, TRIST v. CHILD.

Syl. 1 (VIII, 450). Lien—Order on particular fund.

Approved in Cogan v. Conover Mfg. Co., 69 N. J. Eq. 364, 60 Atl. 411, applying rule; In re Oliver, 132 Fed. 590, where bank, after acceptance by payee, disconnected order on drawer's rent agent, payable out of particular rents, and bankruptcy occurred before maturity, order was lien on fund in trustee's hands; In re Cramond, 145 Fed. 977, where city contractor assigned all rights to moneys payable from city to bank to get money to do work, bank's claim was superior to labor claims under bankruptcy act.

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Syl. 3 (VIII, 451). Lien—Agreement to pay out of specified fund.

Approved in Long v. Farmers' State Bank, 147 Fed. 364, where debtor agreed to insure property to protect bank's claim, debtor assigning such amount of insurance to bank as collateral security, there was no assignment of policies in praesenti; Weiss v. Gullett, 18 Colo. App. 128, 70 Pac. 444, where contracts provided for compensation to attorney payable out of proceeds of sale of mine, he to be interested therein to extent of compensation, third party purchasing mine not liable to attorney, though he knew of agreement.

Syl. 6 (VIII, 452). Contracts against public policy unenforceable.

Approved in Bass v. Smith, 12 Okl. 488, 71 Pac. 628, refusing specific performance of agreement to convey lands to be entered as homestead in consideration of support of entryman for life.

Syl. 7 (VIII, 453). Claim against government—Attorney's contract.

Approved in Baumhoff v. Oklahoma City Gas etc. Co., 14 Okl. 141, 77 Pac. 44, upholding contract for sale of city franchises after they have been amended by council where no action on part of either party required.

Syl. 8 (VIII, 453). Lobbying contract void.

Distinguished in Padilla v. Padilla, 11 N. M. 546, 70 Pac. 564, upholding contract whereby brother who had recovered judgment in own name on Indian depredation claim for property jointly owned by himself and sister agreed to give her share of money.

Syl. 9 (VIII, 454). Attorney's fees—Lobbying contract.

Approved in Garst v. Love, 6 Okl. 56, 55 Pac. 22, in action for pasturing cattle on plaintiff's land, answer alleging that land inclosed is government land and is inclosed for mere speculative purposes, states good defense.

Distinguished in Nutt v. Knut, 200 U. S. 21, 50 L. 353, 26 Sup. Ct. 216, affirming Knut v. Nutt, 83 Miss. 373, 102 Am. St. Rep. 452, 35 So. 688, where one holding claim against government executed power authorizing attorney to prosecute claim and another instrument giving percentage of amount collected, fact that power is void under U. S. Rev. St., § 3477, does not invalidate contract for compensation.

21 Wall. 453-456, 22 L. 616, HILL v. MENDENHALL.

Syl. 3 (VIII, 455). Contradicting record of foreign judgment.

Approved in Cohen v. Portland Lodge No. 142, B. P. O. E., 140 Fed. 775, domestic judgment is not conclusive against one who, while made defendant, is not shown by record to have been served or to have appeared.

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21 Wall. 456-475, 22 L. 678, BALTIMORE ETC. RAILROAD CO. v. MARYLAND.

Syl. 6 (VIII, 457). Charter provision for payment—Percentage of earnings.

Distinguished in Northern Securities Co. v. United States, 193 U. S. 347, 378, 48 L. 704, 717, 24 Sup. Ct. 436, upholding anti-trust act of 1890, as applied to combination of stockholders of two competing interstate railroads to form holding company which would acquire in exchange of its own stock controlling interest in each road.

21 Wall. 475-480, 22 L. 685, FOX v. GARDNER.

Syl. 1 (VIII, 457). Bankruptcy—Agreement substituting another as creditor.

Approved in In re Pease, 129 Fed. 449, where trust company through its attorney, who also represented other creditors, made loan to merchant with proceeds of which he paid certain creditors, including attorney's clients, in full, and company next day sold borrower's stock under chattel mortgage, transaction was fraudulent preference.

21 Wall. 481-488, 22 L. 471, GROSHOLZ v. NEWMAN.

Syl. 1 (VIII, 458). Secret intent to homestead—Bona fide purchaser.

Approved in Ball v. Houston, 11 Okl. 238, 66 Pac. 359, mere intention to occupy premises at future time as home, without actual occupancy, does not impress them with homestead character.

21 Wall. 488-492, 22 L. 650, TEXAS v. CHILES.

Syl. 1 (VIII, 458). Party as competent witness.

Approved in Blood v. Morrin, 140 Fed. 920, plaintiff in federal court who is citizen of another state and resides more than 100 miles from place of trial may be compelled to give deposition de bene esse.

21 Wall. 492-500, 22 L. 595, ERIE RAILWAY CO. v. PENNSYLVANIA.

Syl. 2 (VIII, 459). Taxation of railroad "doing business" in state.

Approved in State v. Canadian Pac. Ry. Co., 100 Me. 207, 60 Atl. 903, construing Pub. Laws, c. 145, p. 160, as authorizing taxation of railroads on mileage basis of apportionment.

Syl. 3 (VIII, 460). Tax exemption must be clear.

Approved in New York v. State Board of Tax Commrs., 199 U. S. 37, 105 Am. St. Rep. 699, 50 L. 75, 25 Sup. Ct. 715, N. Y. Laws 1899, c. 712, imposing special franchise tax, does not impair obligation of contract by which state or city granted right to maintain street railway in New York City in consideration of payment of annual percentage of earnings; American Smelting etc. Co. v. People, 34 Colo. 253, 82 Pac. 535, Sess. Laws 1897, p. 157, and Sess. Laws 1901, p. 116,

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imposing privilege tax on foreign corporations does not exempt them from further taxation.

21 Wall. 503-520, 22 L. 599, CASE OF BRODERICK'S WILL.

Syl. 1 (VIII, 461). Equity jurisdiction to set aside will.

Approved in O'Callaghan v. O'Brien, 199 U. S. 102, 105, 108, 50 L. 108, 109, 110, 25 Sup. Ct. 727, denying circuit court's jurisdiction over bill to declare nonexistence of will and nullity of its state probate where contest under state statute is but ancillary to original probate proceedings; Goodrich v. Ferris, 145 Fed. 851, 852, equity has no jurisdiction to set aside decree of probate court distributing estate made after notice required by statute; Medill v. Snyder, 71 Kan. 598, 81 Pac. 219, Code Civ. Proc., § 23, does not extend time for contesting will. See 106 Am. St. Rep. 643, note.

Syl. 1 (VIII, 463). Limitations—Nondiscovery of fraud—Remote residence.

Approved in Goodrich v. Ferris, 145 Fed. 860, upholding sufficiency, under Cal. Code, of notice by posting notice of hearing of petition for distribution for ten days prior to hearing; Dowdell v. United States District Court, 139 Fed. 446, where proceedings to limit liability in admiralty have been terminated by final decree, court cannot reopen case to permit nonappearing claimants to prove claims; Knight v. Hollings, 73 N. H. 503, 63 Atl. 42, one seeking to set aside probate of will is barred by laches where suit not begun till lapse of over twelve years after probate; Siers v. Wiseman, 58 W. Va. 349, 52 S. E. 463, agency of one for purpose of paying taxes on land of another shown by proof of his payment for long period without asserting title, allowing it to become delinquent for one year and purchasing at delinquent sale without taking deed and continuing to pay taxes in name of owner.

Syl. 6 (VIII, 464). Federal equity—Change in state law.

Approved in Barber Asphalt Pav. Co. v. Morris, 132 Fed. 949, 67 L. R. A. 761, 66 C. C. A. 55, Duluth charter providing for appeals from allowance or rejection of claims to state district court and prohibiting payment of claims pending appeal, does not restrict power of federal court to enforce its judgment on such claims.

Syl. 7 (VIII, 464). Federal courts—State enlargement of equity.

Approved in Devine v. Los Angeles, 202 U. S. 333, 50 L. 1053, 26 Sup. Ct. 652, applying rule to bill to quiet title framed under Cal. Code Civ. Proc., § 738; Mathews Slate Co. v. Mathews, 148 Fed. 493, denying federal jurisdiction over suit brought under Rev. Laws Mass., c. 159, § 3, cl. 7, giving courts jurisdiction in equity of suits by creditors to apply to debt property which cannot be attached in action at law; Ames Realty Co. v. Big Indian Min. Co., 146 Fed. 174, 175, 176, federal court may enforce rights given by Civ. Code Mont., § 1891, providing that in action for protection of water rights all persons

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diverting water from same stream may be made parties and that one judgment may settle rights of all; Illinois Life Ins. Co. v. Newman, 141 Fed. 450, 453, denying jurisdiction to enjoin collection of tax levied under state statute alleged to be void, though such power conferred by statute on state courts.

21 Wall. 521-531, 22 L. 606, LANGDEAU v. HANES.

Syl. 3 (VIII, 466). Legislative confirmation of land claim.

Approved in Sage v. Rudnick, 91 Minn. 331, 100 N. W. 107, grant to Hastings etc. R. R. Co. being in praesenti legal title passed on filing map of definite location; Territory v. Delinquent Taxpayers, 12 N. M. 174, 76 Pac. 318, imperfect Mexican grant not taxable when court of private land claims has not confirmed survey; Territory v. Delinquent Taxpayers, 12 N. M. 67, 73 Pac. 623, perfect Mexican grant taxable though grant submitted for confirmation by court of private land claims and patent not yet issued; Catron v. Laughlin, 11 N. M. 629, 631, 632, 72 Pac. 31, 32, where New Mexico surveyor general has declared Mexican grant valid and recommended confirmation without limitation as to quantity, congressional confirmation as recommended applies to all land claimed; Kneeland v. Korter, 40 Wash. 369, 82 Pac. 611, 1 L. R. A. (N. S.) 745, where tide land between high and low water mark within place limits of railroad grant had been surveyed and defined and railroad had performed all conditions before admission of state, railroad entitled to land under Const., art. 17, § 2, though patent not issued till after constitution; dissenting opinion in Sage v. Rudnick, 91 Minn. 329, 98 N. W. 90, majority holding time during which right of plaintiff's grantor to land grant was in litigation in Land Department not counted in determining whether right to land is barred by adverse possession.

21 Wall. 532-558, 22 L. 487, EDWARDS v. ELLIOT.

Syl. 6 (VIII, 468). Maritime contract—Building of ship.

Approved in Delaney etc. Iron Co. v. The Winnebago, 142 Mich. 88, 105 N. W. 529, and The Winnebago, 141 Fed. 948, both upholding Mich. Comp. Laws, c. 298, § 10,789, giving lien to contractors and persons furnishing labor and materials in construction of vessels, and providing for enforcement in state courts; Arnold v. Eastin, 116 Ky. 708, 76 S. W. 859, contract to furnish material for construction of dock, reserving lien thereon to seller, is not maritime.

Syl. 7 (VIII, 469). State liens for shipbuilding.

Approved in The Winnebago, 141 Fed. 949, upholding Mich. Comp. Laws, c. 298, giving lien to contractors and persons furnishing labor and materials in construction of vessels, and providing for enforcement in state courts.

Syl. 8 (VIII, 469). Right to jury trial.

Approved in Ex parte Munn, 140 Fed. 783, under Rev. St., § 753, federal court cannot, on habeas corpus, release one confined for con-

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tempt of state court for refusing to testify on ground that answers might incriminate him; Board of Commrs. v. McKinley, 8 Okl. 135, 56 Pac. 1046, upholding Code Civ. Proc., § 304, authorizing reference of issue of fact requiring examination of mutual accounts; Van Trees v. Territory, 7 Okl. 374, 54 Pac. 502, under Civ. Code, § 304, relating to reference of accounts, court may make reference over objection of defendant; Gunn v. Union R. R. Co., 27 R. I. 322; 62 Atl. 119, upholding Gen. Laws 1896, c. 251, § 11, authorizing supreme court to direct verdict without further trial by jury.

Distinguished in Bradford v. Territory, 1 Okl. 371, 34 Pac. 67, holding void St. Okl., art. 18, § 22, providing that nine jurors may return verdict, as violating seventh amendment.

21 Wall. 558-609, 22 L. 654, THE LOTTAWANNA.

Syl. 2 (VIII, 470). Maritime law, how far operative.

Cited in United States v. Evans, 195 U. S. 365, 49 L. 237, 25 Sup. Ct. 46, arguendo.

Syl. 4 (VIII, 471). Limits of admiralty jurisdiction statutes.

Approved in The James T. Furber, 129 Fed. 812, denying admiralty jurisdiction over suit for collection of rent of wharf space, under Me. Rev. St., c. 93, § 7, giving lien for use of wharf.

Syl. 9 (VIII, 473). Maritime liens—State laws.

Approved in The Sue, 137 Fed. 135, following rule; Fredericks v. Jas. Rees & Sons Co., 135 Fed. 731, 68 C. C. A. 368, lien for supplies furnished vessel given by Pa. Act 1858, P. L. 363, is enforceable exclusively in admiralty.

Syl. 12 (VIII, 477). Admiralty—Debt not found on maritime contract.

Approved in The Clifton, 143 Fed. 463, denying admiralty jurisdiction over suit to recover possession of vessel by mortgagee under mortgage to secure money borrowed to pay purchase price of vessel; Michigan S. S. Co. v. Thornton, 136 Fed. 137, 69 C. C. A. 132, where charter providing for payment of freight in cash on delivery of each cargo gave lien on all cargo and subfreights for freight though cargoes delivered, and consignee paid shipper, money paid shipper was impressed with trust for ship owner.

21 Wall. 609-616, 22 L. 687, FIRST NATIONAL BANK OF SELMA v. COLBY.

Syl. 5 (VIII, 480). Abatement by dissolution of bank defendant.

Approved in Fish v. Olin, 76 Vt. 124, 56 Atl. 533, receiver of national bank may sue at law in own name in state courts.

Distinguished in Hudson v. Limestone Natural Gas Co., 132 Fed. 411, stockholders of dissolved corporation cannot be held individually liable for damages caused by negligence of corporation committed in conduct of business before dissolution.

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21 Wall. 616-635, 22 L. 492, JACKSON v. LUDELING.

Syl. 1 (VIII, 481). Equity—Two having interest in security.

Approved in Jones v. Missouri-Edison Elec. Co., 144 Fed. 771, where holders of majority stock, against protest of minority of preferred stock, consolidated corporation with another owned by majority, upon terms giving minority less percentage of preferred stock, consolidation was fraud on minority; Booker v. Crocker, 132 Fed. 8, 10, 65 C. C. A. 627, proportionate share of each holder of bonds secured by same mortgage in liens purchased and in expenses thereof, is measured by par value of his bonds.

Syl. 3 (VIII, 481). Corporation officers are trustees.

Approved in Jones v. Missouri-Edison Elec. Co., 144 Fed. 779, where majority stockholders, against protest of minority of preferred stock, consolidated corporation with another owned by majority, on terms giving minority less percentage of preferred stock, consolidation was fraud on minority; Stewart v. Harris, 69 Kan. 505, 77 Pac. 280, 66 L. R. A. 261, president of corporation actively engaged in its management must inform ordinary stockholder of true condition of corporation's affairs before he purchases stock of latter.

Syl. 4 (VIII, 482). Purchase by directors at foreclosure sale.

Approved in Jones v. Missouri-Edison Elec. Co., 144 Fed. 772, 776, where majority stockholders, against protest of minority of preferred stock, consolidated corporation with another owned by majority, upon terms giving minority less percentage of preferred stock, consolidation was fraud on minority; Burns v. Cooper, 140 Fed. 277, sale by guardian of ward's realty under order of court is voidable by ward where guardian procured sale for purpose of securing title for himself; Reed v. Schmidt, 115 Ky. 82, 72 S. W. 369, 61 L. R. A. 270, construing bondholders' pooling agreement to purchase at foreclosure sale.

21 Wall. 642-647, 22 L. 549, DOE v. CHILDRESS.

Syl. 1 (VIII, 484). Bankruptcy—Attachment four months prior.

Approved in Klipstein v. Allen-Miles Co., 136 Fed. 390, 69 C. C. A. 229, bankrupt's surety on bond to discharge garnishment in pending suit against bankrupt is discharged by discharge in bankruptcy.

(VIII, 484.) Miscellaneous. Cited in Rochester Lumber Co. v. Locke, 72 N. H. 25, 54 Atl. 707.

21 Wall. 652-659, 22 L. 472, UNITED STATES v. BOECKER.

Syl. 1 (VIII, 485). Liability of sureties on distiller's bond.

Approved in Saffroi v. Cobun, 32 Tex. Civ. 82, 73 S. W. 830, surety on liquor license bond discharged where holder of license by false statements to clerk induced him to change place named in license to another corner; Stern v. Sawyer, 78 Vt. 11, 112 Am. St. Rep. 894, 61 Atl. 38, where, pending term of lease, lessor sold portion of property with consent of lessee but without consent of lessee's sureties, sureties were discharged.

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Distinguished in Segari v. Mazzei, 116 La. 1030, 41 So. 246, mere change in site of dwelling-house, to be constructed under contract, from one place to another in same square, without causing additional expense to contractor, does not discharge contractor's surety.

21 Wall. 660-675, 22 L. 639, MORTON v. NEBRASKA.

Syl. 3 (VIII, 486). Public lands—Exception of saline lands.

Approved in Eastern Oregon Land Co. v. Brosnan, 147 Fed. 809, where land grant to state for construction of road exempted lands previously reserved or otherwise appropriated, complaint in ejectment against patentee must affirmatively show that at time grant became fixed land in question not within exception; Flanagan v. Forsythe, 6 Okl. 240, 50 Pac. 156, after final proof made and patent issued, lands entered as homestead are not exempt from liability for debts.

XXII WALLACE.

22 Wall. 32-38, 22 L. 793, MUTUAL BENEFIT LIFE INSURANCE CO. v. NEWTON.

Syl. 2 (VIII, 492). Insurance—Proofs of death as evidence.

Limited in Aetna Life Ins. Co. v. Milward, 118 Ky. 729, 82 S. W. 367, 368, in action on accident policy, verdict of coroner's jury is not admissible on issue of cause of death.

22 Wall. 42-47, 22 L. 838, HOUSE v. MULLEN.

Syl. 6 (VIII, 494). Decree sustaining demurrer without prejudice.

Approved in Fowler v. Osgood, 141 Fed. 24, where demurrer is general and special for want of jurisdiction, judgment sustaining demurrer for want of jurisdiction should be limited accordingly; Indian Land etc. Co. v. Shoenfelt, 135 Fed. 487, 68 C. C. A. 196, where equity has no jurisdiction of suit, decree of dismissal must expressly adjudge that it was rendered on that ground or must be without prejudice.

(VIII, 493.) Miscellaneous. Cited in Graham v. Oregon etc. Nav. Co., 134 Fed. 693, permitting amendment of libel in admiralty where exceptions for want of jurisdiction sustained.

22 Wall. 47-57, 22 L. 833, JEFFRIES v. ECONOMIC MUTUAL LIFE INSURANCE CO.

Syl. 1 (VIII, 495). Insurance—Application as warranty.

Approved in Atlas Red. Co. v. New Zealand Ins. Co., 138 Fed. 499, where policy stipulated for its avoidance if property be encumbered, without insurer's consent, indorsement by insurer's agent, "Subject to all conditions of policy, loss payable to A, as his interest may ap-

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pear," is not consent to encumbrance; Rupert v. Supreme Court U. O. F., 94 Minn. 295, 296, 102 N. W. 716, holding answers to questions concerning health in application for life insurance not warranties; Thompson v. Travelers' Ins. Co., 13 N. D. 451, 101 N. W. 901, where policy was not to be effectual unless insured in good health when first premium paid, actual and not apparent good health was required; Willoughby v. Fidelity etc. Co., 16 Okl. 554, 85 Pac. 716, applying rule to contract of indemnity insurance.

22 Wall. 57-60, 22 L. 729, SCOTT v. KELLY.

Syl. 2 (VIII, 497). Federal question—Decision bankrupt had no title.

Approved in Cramer v. Wilson, 195 U. S. 416, 49 L. 259, 25 Sup. Ct. 94, contention that conveyance was in fraud of creditors under state law or that residuary estate remained in grantor which would pass under bankruptcy assignee's sale raises no federal question.

22 Wall. 60-67, 22 L. 764, PUTNAM v. DAY.

Syl. 3 (VIII, 498). Laches not first raisable on bill of review.

Approved in Burk v. Johnson, 146 Fed. 211, where bill to rescind contract assigning territory for promotion of societies under copyrighted by-laws was predicated on false representations of defendant, it is not sustainable on proof of mutual mistake.

22 Wall. 77-81, 22 L. 564, MAXWELL v. STEWART.

Syl. 6 (VIII, 501). Fraud as defense to foreign judgment.

See 103 Am. St. Rep. 315, note.

22 Wall. 99-104, 22 L. 816, UNITED STATES v. INSURANCE COS.

Syl. 2 (VIII, 502). Acts of de facto officers.

Approved in Cullins v. Overton, 7 Okl. 482, 54 Pac. 705, where Texas authorities organized disputed territory into county government, judgment of court thereof was valid though later federal supreme court held territory was not in Texas.

22 Wall. 105-115, 22 L. 713, MARYLAND v. RAILROAD CO.

Syl. 2 (VIII, 503). Contracts—Surrounding circumstances aiding construction.

Approved in Barcus v. Gates, 130 Fed. 367, applying rule to written contract for employment of attorney for contingent fee; Merica v. Burget, 36 Ind. App. 459, 75 N. E. 1086, construing contract whereby vendors of bank agreed to quit banking business and not start another bank in same town while vendees continued to own bank.

22 Wall. 116-123, 22 L. 780, PLEASANTS v. FANT.

Syl. 5 (VIII, 505). When nonsuit proper.

Approved in American etc. Plate Co. v. Pittsburgh etc. Ry. Co., 143 Fed. 795, where engineer entering city at night was flagged and told

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house ahead was on fire and that firemen were about to run hose on track, and he could not back because of train behind, and he immediately went ahead, railroad not liable to owner of building for interfering with firemen; Parks v. Southern Ry. Co., 143 Fed. 277, 278, upholding direction of verdict for defendant in action for killing flagman while trying to flag train; Loder v. Jayne, 142 Fed. 1022, ordering new trial of remission of excessive damages in action for damages caused by unlawful combination in restraint of interstate commerce; Huntt v. McNamee, 141 Fed. 294, 295, upholding direction of verdict in action for personal injuries where complaint charged defendant because of negligence of his agent and uncontradicted evidence showed agent was independent contractor; Minahan v. Grand Trunk etc. Ry. Co., 138 Fed. 46, 70 C. C. A. 463, where servant working on scaffolding was killed by recoil of pneumatic tool, which should not recoil when in proper condition, and he had previously told foreman that it was out of order and later was told it was repaired, questions of assumption of risk or contributory negligence were for jury; Camden etc. Ry. Co. v. Rice, 137 Fed. 328, 69 C. C. A. 656, holding evidence in action for injuries to street-car passenger while attempting to alight required submission of question of contributory negligence; Roessler etc. Chemical Co. v. Peterson, 134 Fed. 791, 67 C. C. A. 295, holding general laborer in factory burned while slacking lime assumed risk incident to employment; Chicago etc. Ry. Co. v. Andrews, 130 Fed. 74, 64 C. C. A. 399, applying rule in action for injuries at railroad crossing where plaintiff was guilty of contributory negligence; Chaddick v. Lindsay, 5 Okl. 628, 49 Pac. 944, where railroad fails to supply station or platforms for baggage, employee cannot recover for injuries caused by such failure; Gunn v. Union R. R. Co., 27 R. I. 327, 62 Atl. 121, upholding Gen. Laws 1896, c. 251, § 11, authorizing supreme court to direct judgment without further jury trial.

22 Wall. 123-136, 22 L. 827, OGDENSBURG ETC. R. R. CO. v. PRATT.

Syl. 1 (VIII, 508). Carrier limiting liability to own line.

See 106 Am St. Rep. 605, note.

Syl. 2 (VIII, 509). Liability for acts of connecting carrier.

Approved in Northern Pac. Ry. Co. v. American Trading Co., 195 U. S. 459, 49 L. 278, 25 Sup. Ct. 84, special agreement by carrier to transport through shipment by vessel of connecting carrier sailing on certain date results from acceptance of through rate for shipment to be forwarded via such steamer.

Syl. 3 (VIII, 510). Station agent's power to contract beyond line.

Distinguished in Pittsburgh etc. Ry. Co. v. Bryant, 36 Ind. App. 347, 75 N. E. 831, agent's authority to contract for extraterritorial liability not presumed from authority to receive goods for carriage.

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Syl. 5 (VIII, 510). Carriers—Receipt of pay for through carriage.

Approved in Pittsburgh etc. Ry. Co. v. Bryant, 36 Ind. App. 348, 75 N. E. 831, where carrier's agent collected entire charge for shipment beyond initial carrier's line and gave receipt therefor, it is for jury to determine whether agent contracted to carry goods to destination.

Syl. 6 (VIII, 511). Carrier's duty to furnish suitable cars.

Approved in St. Louis etc. Ry. Co. v. Marshall, 74 Ark. 600, 109 Am. St. Rep. 104, 86 S. W. 803, holding carrier liable for injury to goods caused by defective car though shipper knew of defects and injury may have occurred beyond carrier's own line; Lake Erie etc. R. R. Co. v. Holland, 162 Ind. 414, 69 N. E. 141, 63 L. R. A. 948, carrier liable for damages to shipment caused by hidden defects in car selected by shipper under special contract; Frohlich v. Pennsylvania Co., 138 Mich. 124, 110 Am. St. Rep. 310, 101 N. W. 226, where, under agreement between railroad and consignor, latter selected car delivered to it loaded with sand for shipment of glass, railroad not liable to consignee for loss occasioned by unsuitableness of car. See 106 Am. St. Rep. 609, note.

22 Wall. 157-169, 22 L. 819, IN RE CHILES.

Syl. 3 (VIII, 514). Federal courts—Punishment for contempt.

Approved in Bessette v. W. B. Conkey Co., 194 U. S. 327, 48 L. 1001, 24 Sup. Ct. 665, order of federal court finding one not party to suit guilty of contempt in violating restraining order is reviewable in circuit court of appeals on writ of error; Heinze v. Butte etc. Min. Co., 129 Fed. 279, 63 C. C. A. 388, where preliminary injunction against extracting ore granted and also order to permit plaintiff to examine property to obtain evidence on issue joined, which was disobeyed, order adjudging defendant in contempt not reviewable on writ of error.

22 Wall. 170-179, 22 L. 766, BURNHISEL v. FIRMAN.

Syl. 3 (VIII, 516). Bankruptcy—Transfers within four months.

Approved in In re Clifford, 136 Fed. 476, mortgage for purchase price of cattle given more than four months prior to petition in bankruptcy, but not recorded until within such time, is not illegal preference.

Syl. 4 (VIII, 516). Bankruptcy—Exchange of securities as preference.

Approved in In re Noel, 137 Fed. 700, following rule.

Syl. 7 (VIII, 516). Second security tainted with usury.

Approved in Farmers' Loan etc. Co. v. Meridian W. W. Co., 139 Fed. 670, where water company executed mortgages to build works, and pending suit to annul its franchise company issued new bonds secured by another mortgage to same trustee, which also provided for extension and renewal of liens of prior mortgage, such provision did not discharge prior mortgages.

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22 Wall. 180-198, 22 L. 863, THE ELGEE COTTON CASES.

Syl. 5 (VIII, 517). Sales—Conditions precedent to passing title.

Approved in Buskirk Bros. v. Peck, 57 W. Va. 367, 50 S. E. 434, under contract of sale of timber to be cut and removed by vendee within specified time, and measured and paid for each month, before removal as work progresses, title vests in purchaser as timber is cut.

22 Wall. 238-250, 22 L. 854, FRENCH v. HAY.

Syl. 5 (VIII, 522). Amendment of bill—Right to answer.

Distinguished in North Chicago St. R. Co. v. Chicago Union Traction Co., 150 Fed. 632, 633, amendment of bill does not entitle defendant who has answered original bill to demur or answer anew to entire bill but only to new matter.

22 Wall. 250-253, 22 L. 857, FRENCH v. HAY.

Syl. 1 (VIII, 523). Enjoining state court after removal—Auxiliary.

Approved in Riverdale Cotton Mills v. Alabama etc. Mfg. Co., 198 U. S. 195, 49 L. 1015, 25 Sup. Ct. 629, federal court which has decreed foreclosure may, by ancillary suit, restrain attack on title of purchaser under decree by state suit brought by party to original suit; Mutual Life Ins. Co. v. Langley, 145 Fed. 421, where cause properly removed to federal court, but state court erroneously denied motion for order transferring cause, federal court could grant ancillary injunction against further state proceedings.

Syl. 2 (VIII, 523). Enjoining state court after removal.

Approved in Riverdale Cotton Mills v. Alabama etc. Mfg. Co., 198 U. S. 196, 49 L. 1015, 25 Sup. Ct. 629, federal court which has decreed foreclosure may, by ancillary suit, restrain attack in title of purchaser under decree by state suit brought by party to original suit; Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 245, 49 L. 464, 25 Sup. Ct. 251, applying principle to proceeding for condemnation of land under Ky. Stat., §§ 835-839.

Syl. 3 (VIII, 524). Prohibition against enjoining state court.

Approved in Julian v. Central Trust Co., 193 U. S. 112, 48 L. 639, 24 Sup. Ct. 399, federal court which has decreed foreclosure sale may entertain supplemental proceedings by purchaser under decree to enjoin sale of property for satisfaction of state judgment against mortgagor to which purchaser was not party; St. Louis Min. etc. Co. v. Montana Min. Co., 148 Fed. 454, Rev. St., § 720, does not prohibit federal court from enjoining party to action before it from prosecuting suit in state court when necessary to make effectual its own prior judgment determining rights of parties to it; Glucose Refining Co. v. City of Chicago, 138 Fed. 212, upholding bill to enjoin enforcement of alleged illegal city smoke ordinance; St. Bernard Min. Co. v. Madisonville etc. Co., 130 Fed. 795, where proceeding to acquire land for right of way properly removed

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to federal court after commissioner's report filed in state court, federal court could enjoin plaintiff from further proceeding in state court.

22 Wall. 322-329, 22 L. 823, PITTSBURGH ETC. RAILWAY CO. v. RAMSEY.

Syl. 4 (VIII, 527). Consent gives no jurisdiction.

Approved in Hadley v. Bernero, 103 Mo. App. 558, 78 S. W. 66, where appeal from judgment of justice of peace in unlawful detainer is not taken within time allowed, but no objection raised to appellate jurisdiction, judgment cannot be vacated on writ of error coram nobis.

Syl. 6 (VIII, 527). State court must remove on proof.

Approved in Shane v. Butte Elec. Ry. Co., 150 Fed. 805, where complaint in state court alleges joint cause of action against nonresident corporation and its resident employee, question of improper joinder not raisable by allegations in removal petition filed by corporation; Helena etc. Transmission Co. v. Spratt, 146 Fed. 313, cause removed to federal court on ground of diversity of citizenship remanded unless jurisdiction appears from petition for removal and all pleadings and papers filed in state court; Illinois etc. Ry. Co. v. Jones, 118 Ky. 165, 80 S. W. 485, where petition for removal shows removable controversy prima facie, issues as to truth of facts stated in petition are for federal court.

22 Wall. 341-350, 22 L. 877, NEW JERSEY R. R. ETC. CO. v. POLLARD.

Syl. 1 (VIII, 529). Injury to passenger presumes negligence.

Approved in Southern Pac. Co. v. Cavin, 144 Fed. 351, applying rule where mail clerk injured in train wreck; Cavin v. Southern Pac. Co., 136 Fed. 593, 69 C. C. A. 366, holding erroneous instruction in action by mail clerk against carrier for injuries that carrier only required to exercise such care as careful and skillful men in such business are expected to use; Burr v. Knickerbocker etc. Co., 132 Fed. 249, 65 C. C. A. 554, where moving of schooner from dock to wider part of channel to be there turned and headed for sea was in charge of tug, and she grounded in calm, prima facie negligence of tug shown; Firebaugh v. Seattle Elec. Co., 40 Wash. 662, 82 Pac. 997, 2 L. R. A. (N. S.) 836, applying rule where street-car passenger injured by blowing out of controller.

Limited in Cincinnati etc. Ry. Co. v. South Fork Coal Co., 139 Fed. 533, 534, where, as result of rear-end collision, oil cars telescoped and set on fire by engine sparks, and fire spread to plaintiff's lumber along tracks, presumption of want of ordinary care in operation of trains raised.

Syl. 2 (VIII, 530). Injury to passenger—Burden on carrier.

Approved in Fitch v. Mason City etc. Traction Co., 124 Iowa, 671, 100 N. W. 621, upholding instruction as to presumption of negligence in action for injuries to passenger on electric train thrown from seat and out of car when car rounded curve.

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Syl. 4 (VIII, 530). Passenger carrier must use greatest care.

Approved in Williams v. Spokane Falls etc. Ry. Co., 39 Wash. 89, 80 Pac. 1103, applying rule in action for injuries by postal clerk injured by collision between baggage-cars and mail-car while train being made up.

Syl. 7 (VIII, 531). Passenger injured by sudden jerk.

Approved in Illinois Central R. R. Co. v. Jolly, 117 Ky. 639, 78 S. W. 478, aged passenger who, on approaching destination, leaves seat and stands at door before train stops, cannot recover for injuries sustained by jerking of train while stopping

Syl. 9 (VIII, 531). When nonsuit refused.

Approved in Gibson v. Canadian Pacific Nav. Co., 1 Alaska, 414, upholding refusal of nonsuit where plaintiff injured in unloading freight from vessel to wharf.

Syl. 10 (VIII, 531). Parties as witnesses.

Approved in Blood v. Morrin, 140 Fed. 920, plaintiff in federal court who is citizen of another state and resides more than one hundred miles from place of trial may be compelled to give deposition de bene esse.

22 Wall. 381-394, 22 L. 796, MORGAN v. CAMPBELL.

Syl. 1 (VIII, 533). Goods distrainable by landlord.

Approved in Smith v. Wheeler, 4 Okl. 144, 44 Pac. 205, lessee may secure by chattel mortgage of personalty situated on premises debt of creditor in preference to landlord.

22 Wall. 395-406, 22 L. 801, AMSINCK v. BEAN.

Syl. 6 (VIII, 534). Bankruptcy of firm.

Approved in Thompson v. First Nat. Bank, 84 Miss. 60, 36 So. 66, where partnership dissolved, and by consent of retiring partner and creditors title of firm property transferred to continuing partner who transferred property, it is no objection, in suit by trustee in bankruptcy of continuing partner to recover property, that assets were firm assets.

22 Wall. 444-464, 22 L. 747, UNION PACIFIC R. R. CO. v. McSHANE.

Syl. 1 (VIII, 537). State tax before issuance of patent.

Approved in Tegarden v. Le Marchel, 129 Fed. 490, state statute giving defendant in ejectment right to recover value of improvements is not applicable where plaintiff claims under government patent issued after improvements made; dissenting opinion in Delinquent Tax-list v. Territory of Arizona, 4 Ariz. 189, 39 Pac. 328, majority holding taxpayer cannot object to tax on unconfirmed Mexican grant on ground that title thereto is in public without first tendering taxes due on other property included in assessment.

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Syl. 2 (VIII, 538). State tax before paying costs of survey.

Approved in Topeka etc. Security Co. v. McPherson, 7 Okl. 342, 344, 54 Pac. 492, territorial legislature cannot subject to taxation lots in government townsite pending contest in Land Department between occupying claimants.

Distinguished in Territory v. Delinquent Taxpayers, 12 N. M. 70, 73 Pac. 624, perfect Mexican grant not taxable though submitted for confirmation by court of private land claims and patent not yet issued

22 Wall. 513-527, 22 L. 758, ROBINSON v. ELLIOTT.

Syl. 5 (VIII, 543). Chattel mortgage—Retention of possession.

Approved in Little Co. v. Burnham, 5 Okl. 293, 49 Pac. 69, following rule; Mitchell v. Mitchell, 147 Fed. 284, where chattel mortgage on stock of goods was not recorded for several months after execution and until less than four months of mortgagor's bankruptcy, who held possession and sold goods in due course and replenished stock, it is void as to creditors; In re Marine Construction etc. Co., 144 Fed. 651, mortgage on plant and stock of material, permitting borrower to use mortgaged stock and replace it, is valid as to property on hand when given, but does not give lien on boat built from materials furnished after it was given; In re Marine Const. etc. Co., 135 Fed. 923, 927, mortgage on plant and stock of material for money borrowed for use in ordinary business, permitting borrower to use mortgaged stock and replace it, is void as to stock and as to boat built therefrom; Dugan v. Beckett, 129 Fed. 58, 59, 63 C. C. A. 498, chattel mortgage on stock authorizing mortgagor to continue possession and sell goods but requiring him to deposit each day, to mortgagee's account, receipts over running expenses, to be applied to debt, is not void on its face; Ranney-Alton Mer. Co. v. Watson, 10 Okl. 681, 65 Pac. 99, holding void chattel mortgage on stock of goods permitting possession and sale in due course by mortgagor, but not requiring him to apply proceeds to mortgage debt or to account; Bank of Perry v. Cooke, 3 Okl. 546, 551, 41 Pac. 633, 634, following rule though agreement to retain possession was oral; Nelden-Judson Drug Co. v. Commercial Nat. Bank, 27 Utah, 66, 74 Pac. 197, mortgage on drugstore, mortgagor to retain possession, sell goods in course of trade, and turn over proceeds less expenses to mortgagee, is void as to creditors, where not intended that mortgage shall ever be paid and mortgagor retains proceeds of sale.

Distinguished in In re Burnham, 140 Fed. 929, under New York law chattel mortgage on merchandise permitting mortgagor to sell in due course, proceeds to be used only to pay running expenses, replenishing stock and paying debt, is valid as to after-acquired goods.

22 Wall. 527-576, 22 L. 805, TUCKER v. FERGUSON.

Syl. 9 (VIII, 546). Gratuitous tax exemption revocable.

Approved in Powers v. Detroit etc. Ry. Co., 201 U. S. 557, 50 L. 865, 26 Sup. Ct. 556, Mich. Laws 1855, p. 305, § 9, providing that

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railroad should pay annual percentage in capital stock in lieu of all other taxes, created contract between state and company; Baltimore etc. Ry. Co. v. Wicomico Co., 103 Md. 289, 290, 63 Atl. 682, 683, Gen. Assess. Law 1896, p. 151, relating to assessment of railroad property, recalled immunity from taxation acquired by purchasers at foreclosure of railroad having immunity; Rochester v. Rochester Ry. Co., 182 N. Y. 116, 118, 74 N. E. 958, 959, 70 L. R. A. 773, immunity from contribution to expense of new pavements conferred on street railway by Laws 1869, p. 54, was revocable and did not pass to lessee of railway.

Syl. 12 (VIII, 548). Contract exempting from taxes strictly construed.

Approved in Lake Drummond Canal Co. v. Commonwealth, 103 Va. 345, 49 S. E. 508, under Code 1887, §§ 1233, 1234, sale on foreclosure of deed of trust of all property and franchises of corporation did not pass immunity from taxation granted to corporation.

22 Wall. 576-594, 22 L. 730, ROSS v. JONES.

Syl. 4 (VIII, 550). Construction of statute derogatory of common law.

Approved in Casey v. St. Louis Transit Co., 116 Mo. App. 252, 91 S. W. 425, under Rev. St. 1899, § 2864, providing for forfeiture of $5000, for wrongful death through negligence of corporation, petition seeking recovery of less sum is bad.

22 Wall. 594-604, 22 L. 724, EVANSVILLE ETC. R. R. CO. v. ANDROSCOGGIN MILLS.

Syl. 1 (VIII, 550). Contract of through carriage.

Approved in Pittsburg etc. Ry. Co. v. Viers, 113 Ky. 538, 539, 68 S. W. 473, connecting carrier receiving cattle from initial carrier without limiting liability is presumed to have accepted cattle under original contract made with initial carrier on behalf of itself and connecting carriers.

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XXIII WALLACE.

23 Wall. 1-19, 23 L. 146, THE CLARITA AND THE CLARA.

Syl. 1 (VIII, 554). Liability of tug for collision by tow.

Approved in The De Gama, 140 Fed. 755, vessel in tow is not liable for collision where it is not guilty of negligence and its navigation was not under direction of her officers; The Newburgh, 130 Fed. 324, 64 C. C. A. 567, where lighter was shown to have anchored in anchorage grounds in dense fog and was sunk by collision with steamer going at excessive speed, lighter not contributorily liable.

Distinguished in The Degama, 150 Fed. 324, moving vessel colliding with moored vessel not exonerated, though she was in control of tugs, unless such defense is pleaded and proved.

Syl. 4 (VIII, 555). Collision—Vessel anchored in improper place.

Approved in Ross v. Cornell Steamboat Co., 143 Fed. 172, holding dredge at fault for anchoring at night in bend in channel where it was difficult for vessels with long tows to pass; Rebstock v. Gilchrist Transp. Co., 132 Fed. 177, holding where moored vessel was in proper place and was struck by vessel in tow of two tugs, rear tug liable for collision.

Syl. 7 (VIII, 555). Salvage defined.

Approved in The Dumper No. 8, 129 Fed. 99, 63 C. C. A. 600, where crew of tug under contract to tow dumpers to sea go to rescue of dumper which had been abandoned and had drifted to sea, and bring her safely to port, they are entitled to salvage.

Syl. 9 (VIII, 555). Salvage—Steamer causing damage.

Approved in The Pine Forest, 129 Fed. 702, 704, 64 C. C. A. 228, raising of sunken vessel by other vessels owned by owner of tug which was in charge of vessel when she sank and who was in fault therefor is not salvage service.

23 Wall. 20-35, 23 L. 55, THE GREAT REPUBLIC.

Syl. 8 (VIII, 556). Collision—Liability of faster boat.

Distinguished in The Edward Smith, 135 Fed. 38, 67 C. C. A. 506, dividing damages where faster vessel permitted to pass without protest and slower vessel checked speed unreasonably.

23 Wall. 46-69, 23 L. 59, COUNTY OF ST. CLAIR v. LOVINGTON.

Syl. 1 (VIII, 558). Boundaries—Courses yield to natural objects.

Distinguished in Security Land etc. Co. v. Burns, 193 U. S. 179, 48 L. 671, 24 Sup. Ct. 425, courses and distances as set forth in official

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survey, which shows meander line of lake as one boundary, control as against actual boundary of lake where survey grossly fraudulent.

Syl. 2 (VIII, 558). Boundaries—Stream between corners.

Approved in Davis v. Commonwealth Land etc. Co., 141 Fed. 721, 722, construing description in patent and following course of natural object between corners; Leonard v. Wood, 33 Ind. App. 84, 70 N. E. 828, holding surveyor's meandering of river not independent boundary so that conveyance bounded by it was bounded by river as existing after change in course.

Syl. 6 (VIII, 559). Title to tide lands.

Approved in Sutter v. Heckman, 1 Alaska, 88, owner of uplands bordering on seashore in Alaska has no proprietorship in tide lands lying immediately in front of property, but merely right of ingress and egress between land and sea over tide lands.

Syl. 7 (VIII, 560). Riparian right to alluvion.

Approved in Sioux City v. Chicago etc. Ry. Co., 129 Iowa, 704, 106 N. W. 187, title to accreted or reclaimed land goes with fee of land to which it is annexed.

23 Wall. 69-76, 23 L. 84, THE DEXTER.

Syl. 1 (VIII, 560). Collision—Necessity for lookout.

Approved in The Pocomoke, 150 Fed. 197, 198, small launch having pilot-house, in which navigator stood, well forward, not liable for collision in daytime because of absence of special lookout.

Syl. 4 (VIII, 561). Collision—Duty of vessels meeting.

Approved in The Georgetown, 135 Fed. 859, holding where steamer having met and passed tug with barge in tow, immediately stopped and reversed, throwing stern in course of barge, she is liable for failure to give notice by signal as required by rules.

23 Wall. 85-108, 23 L. 152, MUTUAL LIFE INS. CO v. YOUNG'S ADMINISTRATOR.

Syl. 1 (VIII, 561). Insurance—Receipt of premium by agent.

Approved in Home Forum Ben. Order v. Jones, 5 Okl. 614, 50 Pac. 170, where rules of beneficial order authorize local lodge to receive applications which must be sent to grand secretary and medical examiner for approval, approval is necessary to create obligation.

Syl. 2 (VIII, 561). Insurance—Offer of policy on different terms.

Approved in McNicol v. New York L. Ins. Co., 149 Fed. 143, applying rule where application denied and insurer submitted amended application with policy based thereon, which it sent to local agent to deliver only when applicant signed amended application, but applicant died before signing; Summers v. Mutual Life Ins. Co., 12 Wyo. 393, 394, 109 Am. St. Rep. 1008, 1009, 75 Pac. 944, 66 L. R. A. 812, where

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plaintiff executed note to insurer's agent in consideration that company would issue policy within stated time, and insurer having received proceeds of note failed to deliver policy, plaintiff could recover for money had and received.

23 Wall. 108-119, 23 L. 67, SECOMBO v. MILWAUKEE ETC. R. R. CO.

Syl. 2 (VIII, 562). Eminent domain—Mode of exercising.

Approved in Shasta Power Co. v. Walker, 149 Fed. 570, upholding right of private corporation to condemn land for ditch to conduct water for purpose of generating electricity to public; Lafayette etc. Ry. Co. v. Butner, 162 Ind. 462, 70 N. E. 529, no appeal lies from order refusing appointment of appraisers in condemnation proceedings for right of way commenced under Burns' Ann. St. 1901, § 5160; Dallas v. Halleck, 44 Or. 252, 258, 75 Pac. 206, 208, holding city having power to condemn land for waterworks could condemn land strip for pipe-line and reservoir site, and could institute proceedings without first providing fund for payments.

Syl. 5 (VIII, 503). Collateral attack on judgment of condemnation.

Approved in Richmond etc. Ry. Co. v. Seaboard etc. Ry. Co., 103 Va. 404, 49 S. E. 514, under Code 1887, c. 46, alleged owners of land sought to be condemned for railroad right of way not entitled to stay pending equity suit between such owners involving title to land.

23 Wall. 119-128, 23 L. 113, LEWIS v. HAWKINS.

Syl. 5 (VIII, 565). Limitations—Equitable relief by vendor on notes.

Approved in Williams v. Young, 71 Ark. 168, 71 S. W. 670, following rule.

Distinguished in Eddy v. San Francisco, 148 Fed. 230, holding twenty years' delay by bondholder barred right to so enforce against city street-widening bonds, payable from special fund, where city had neglected to levy taxes for payment thereof; Patterson v. Hewitt, 11 N. M. 42, 66 Pac. 565, 55 L. R. A. 658, holding eight years' delay in seeking to enforce claims arising under alleged agreement for acquisition of mining claims was laches.

23 Wall. 128-137, 23 L. 116, RAY v. NORSEWORTHY.

Syl. 1 (VIII, 566). Bankruptcy—Sale free from encumbrances.

Approved in In re Noel, 137 Fed. 698, where alleged preference was by way of mortgage, and property has been sold and property deposited in bankruptcy court, court may determine validity of mortgage on petition by trustee.

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23 Wall. 137-150, 23 L. 124, RANDALL v. KREIGER.

Syl. 1 (VIII, 567). Statute validating prior conveyances.

Approved in Whitlock v. Hawkins, 105 Va. 251, 53 S. E. 404, upholding act of 1906, re-enacting Code, c. 23, relating to assessments of lands.

23 Wall. 150-164, 23 L. 50, STICKNEY v. WILT.

Syl. (VIII, 568). Bankruptcy—Jurisdiction of district and circuit courts.

Approved in Security Warehousing Co. v. Hand, 143 Fed. 38, where petition filed in bankruptcy court in nature of bill in equity to establish right of petitioner to take possession of property also claimed by bankrupt's trustee, order thereon is appealable under Bankr. Act, § 24a; In re Scherber, 131 Fed. 124, where petition of bankruptcy trustee to recover preference by summary proceedings did not allege that respondent's claim was colorable only, and respondent objected to form of proceedings, bankruptcy court could not determine matter except by plenary suit.

Syl. 6 (VIII, 569). Bankruptcy appeal.

Approved in First Nat. Bank v. State Nat. Bank, 131 Fed. 432, 65 C. C. A. 414, where appeal has been perfected under Bankr. Act, § 25a, from judgment allowing or rejecting debt, district court cannot entertain motion for rehearing pending appeal.

Syl. 9 (VIII, 569). Bankruptcy appeal—Expiration of time.

Approved in In re Hudson Clothing Co., 140 Fed. 50, where adjudication of bankruptcy, made after full hearing and no appeal taken, rehearing denied where motion made after time to appeal expired.

23 Wall. 165-181, 23 L. 90, THE SEA GULL.

Syl. (VIII, 570). Collision—Position of lookout.

Approved in The Vedamore, 137 Fed. 847, 70 C. C. A. 342, ocean steamer having lookout in crow's nest, one hundred feet from stern, liable for collision with schooner while in Chesapeake Bay.

23 Wall. 181-245, 23 L. 161, THE CORN-PLANTER PATENT. (BROWN v. GUILD; SAME v. SELBY.)

Syl. 1 (VIII, 571). Patents—Withdrawal of application.

Distinguished in Miller & England v. Walker etc. Bin. Co., 138 Fed. 922, holding void Bacon patent No. 447,532, for tilting bin, bin having been previously made and used by another.

Syl. 5 (VIII, 572). Patents—Importing specifications into claim.

Approved in Scott v. Fisher Knitting Mach. Co., 139 Fed. 145, holding Bellis patent No. 561,559, for improvements in knitting machines not infringed by machine of Fisher patent No 656,535.

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Syl. 8 (VIII, 572). Patents—Claims to particular devices.

Approved in Dodge Coal Storage Co. v. New York etc. R. R. Co., 139 Fed. 981, holding void Piez & Beaumont patents Nos. 688,960 and 688,111, granted on division of same application for improvement of storage apparatus; Bullock etc. Mfg. Co. v. Westinghouse etc. Mfg. Co., 129 Fed. 109, 63 C. C. A. 607, making and selling of single element of patented combination with expectation that such element be sent to foreign country and there used in combination of other elements, is not infringement.

23 Wall. 246-261, 23 L. 95, THE COLLECTOR v. RICHARDS.

Syl. 1 (VIII, 572). Customs duties—Value of foreign coins.

Approved in Stone v. Whitridge, 129 Fed. 37, 64 C. C. A. 47, fluctuation in value of foreign coins referred to in Tariff Act 1894, § 25, means metallic and not exchange value.

23 Wall. 261-278, 23 L. 86, MASON v. GRAHAM.

Syl. 2 (VIII, 574). Damages for patent infringement.

Approved in Brinton v. Paxton, 134 Fed. 81, 67 C. C. A. 204, where profit made on patented part alone is shown, apart from that made on whole machine, and that there was no other substitute on market, patentee is entitled to recover profits.

23 Wall. 289-293, 23 L. 155, SANDUSKY v. FIRST NATIONAL BANK.

Syl. 2 (VIII, 576). Re-examination of bankruptcy proceeding.

Approved in In re Kaufman, 136 Fed. 266, bankruptcy court after term may amend discharge, and permit amendment of petition and petition for discharge to conform to amended discharge; In re Herrman, 134 Fed. 566, proceeding against bankrupt under Bankr. Act, 1867, though pending at time of application for discharge in new proceedings under Bankr. Act 1898, is no bar to discharge from debt proved in former proceedings, which had been kept alive by judgment; Leighton v. Kennedy, 129 Fed. 740, 64 C. C. A. 265, arguendo.

23 Wall. 294-307, 23 L. 156, GREGORY v. McVEIGH.

Syl. 1 (VIII, 577). Supreme court—Review of inferior state court.

Cited in Kentucky v. Powers, 201 U. S. 38, 50 L. 650, 26 Sup. Ct. 387, arguendo.

23 Wall. 307-321, 23 L. 119, BLAKE v. NATIONAL BANKS.

Syl. 1 (VIII, 577). Construction of ambiguous statute—Legislative journals.

Approved in Ex parte Helton, 117 Mo. App. 621, 93 S. W. 915, applying principle in construing Laws 1905, pp. 168, 169, relating to hunting licenses; Scouten v. Whatcom, 33 Wash. 281, 74 Pac. 392, construing Sess. Laws 1903, p. 279, relating to annexation of cities.

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23 Wall. 321-331, 23 L. 143, SLACK v. TUCKER.

Syl. 2 (VIII, 578). Factor and broker distinguished.

Approved in Western Express Co. v. United States, 141 Fed. 32, where local agent of express company in prohibition state took orders for beer which it sent to breweries in another state, and latter sent beer to agent, charging it to express company, latter was liable to special tax as dealer in malt liquors under Rev. St., § 3244.

23 Wall. 374-383, 23 L. 47, SMYTHE v. FISKE.

Syl. 1 (VIII, 581). Revenue laws liberally construed.

Approved in United States v. Beasly, 2 Alaska, 103, grand jury of one judicial district cannot indict one for crime committed in another district.

Syl. 2 (VIII, 581). Statutory construction—Title.

Approved in Carrigan v. Stillwell, 99 Me. 437, 59 Atl. 684, 68 L. R. A. 386, construing statute requiring fire-escapes on all buildings where business requires presence of workmen above first floor as not applying to building having restaurant on first floor, whose kitchen with three servants is on sixth.

Syl. 3 (VIII, 581). Contemporaneous statutory construction.

Approved in Pitts v. Logan County, 3 Okl. 740, 41 Pac. 591, clerks of district courts of territorial courts being required by federal law to account to United States treasurer for all fees earned by them, territorial law attempting to regulate same is void.

Syl. 4 (VIII, 582). Customs not otherwise provided for.

Approved in United States v. Boden, 133 Fed. 840, construing Tariff Act 1897, par. 263, with reference to classification of preserved pineapples.

23 Wall. 416-420, 23 L. 81, FASHNACHT v. FRANK.

Syl. 3 (VIII, 585). Matters reviewed on error from state court.

Approved in Kentucky v. Powers, 139 Fed. 491, where one is accused in state court and three convictions are reversed on appeal, and discrimination shown in selection of jury, and rulings on objections to panel are not subject to review under state law, cause is removable under Rev. St., § 641.

23 Wall. 466-471, 23 L. 70, LEWIS v. COCKS.

Syl. 2 (VIII, 587). Equitable relief to owner not served.

Approved in Levi v. Mathews, 145 Fed. 154, in action at law in federal court for recovery of money due on contract, defense of fraud in procurement of contract, is not cognizable; General Elec. Co. v. Westinghouse Elec. & Mfg. Co., 144 Fed. 466, refusing to restrain violation of contract for manufacture and sale of goods where contract provided that if either party violated same, it should pay

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as liquidated damages fifty per cent of sale price of goods; Mutual Life Ins. Co. v. Blair, 130 Fed. 975, insurer may maintain suit to cancel for fraud policy providing for settlement by issuance of annuity contract under which installments payable to widow, and if she died before all annual payments made, remainder of installments payable to children, though widow had sued on policy; Glenn v. West, 103 Va. 524, 49 S. E. 672, holder of equitable title, out of possession, cannot sue to quiet title, one in possession under tax deed.

Syl. 4 (VIII, 588). Equity—Dismissal sua sponte—Lack of jurisdiction.

Approved in Indian Land & Trust Co. v. Shoenfelt, 135 Fed. 486, 68 C. C. A. 196, denying equity jurisdiction single trespass on farming land where probable injury not shown to be irremediable; Kane v. Luckman, 131 Fed. 621, applying rule in suit for specific performance of contract for exchange of farm for cows.

Distinguished in Southern Pac. R. R. Co. v. United States, 200 U. S. 349, 50 L. 510, 26 Sup. Ct. 296, affirming 133 Fed. 655, 66 C. C. A. 581, where bill shows case of equitable cognizance, objection on ground of adequacy of law remedy, is waived if not taken by plea, demurrer or answer at earliest opportunity.

23 Wall. 471-480, 23 L. 71, GRAND TOWER CO. v. PHILLIPS.

Syl. 1 (VIII, 589). Sale—Option to receive cash for deficiency.

Distinguished in Davis v. Alpha etc. Cement Co., 134 Fed. 282, where contract for sale of cement provided for payment of certain sum per barrel for each barrel short of specified number, as liquidated damages, provision was binding.

Syl. 2 (VIII, 589). Damages—Price at place of delivery.

Qualified in Indian Mt. Jellico Coal Co. v. Asheville Ice etc. Co., 134 N. C. 588, 47 S. E. 121, where contract to sell defendant from plaintiff's mine, all coal it may require during specified period, is broken because of strike at plaintiff's mine, latter not required to buy coal from other miners to fill contract.

Syl. 3 (VIII, 589). Damages—No market at place of delivery.

Approved in Salmon v. Helena Box. Co., 147 Fed. 413, 415, 418, determining measure of damages in action by seller for breach of contract for sale of lumber; American Br. Co. v. Camden etc. Ry. Co., 135 Fed. 328, 68 C. C. A. 131, where plaintiff contracted to build bridges for connection of extensions of electric railways by certain time, defendant could, against contract price, recoup interest at legal rate on money expended on extensions from date when bridges should have been completed to date of completion; Marshall v. Clark, 78 Conn. 11, 60 Atl. 742, applying rule in assessing damages for breach of contract to deliver coal sold by wholesaler to retailer; National

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Coal Tar Co. v. Malden etc. Light Co., 189 Mass. 237, 75 N. E. 626, applying rule in action for breach of contract for sale of coal tar.

23 Wall. 492-503, 23 L. 121, MORAN v. PRATHER.

Syl. 1 (VIII, 592). Contracts—Construction of ordinary words.

Approved in Hampden Trust Co. v. Leary, 186 Mass. 581, 72 N. E. 89, construing word "may" in will as meaning "must."

23 Wall. 518-529, 23 L. 97, THE TREMOLO PATENT.

Syl. 1 (VIII, 594). Amendment of bill after final decree.

Approved in Indianapolis Traction etc. Co. v. Lawson, 143 Fed. 838, under Burns' Ind. Ann. St. 1901, § 394, relating to variance, charge construing complaint as covering case made by proof, though erroneous, is not prejudicial error; Chicago Motor Vehicle Co. v. American Oak Leather Co., 141 Fed. 520, upholding allowance of amendment of petition in involuntary bankruptcy, so as to allege specific transfers as acts of bankruptcy when referee so found, and much testimony thereon taken without objection; Dunn v. Mayo Mills, 134 Fed. 805, 67 C. C. A. 450, upholding amendment of complaint in action for balance due on contract, where mistake made in copying statement of claim.

Syl. 3 (VIII, 595). Patents—Profits as damages for infringement.

Approved in Corbin v. Taussig, 137 Fed. 153, applying rule in action for damages for invasion of territory for which plaintiff has exclusive agency for sale of goods; Baker v. Slack, 130 Fed. 520, 65 C. C. A. 138, in determining profits made by defendant from sale of article in unfair trade, expenses of making sales must be deducted from gross sales.

Qualified in Regis v. Jaynes, 191 Mass. 252, 77 N. E. 777, in determining profits made by defendants on sale of trademarked goods, general expenses which were not increased by handling unlawfully marked goods cannot be deducted from gross profits.

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91 U. S. 21-27, 23 L. 193, SEMMES v. UNITED STATES.

Syl. 2 (VIII, 601). Amendment of writ of error by adding seal.

Approved in Kipp v. Burton, 29 Mont. 102, 101 Am. St. Rep. 544, 74 Pac. 87, 63 L. R. A. 325, sale under execution defective for want of seal made prior to Act March 2, 1899, p. 145, § 2, was validated thereby without amendment by court.

91 U. S. 29-37, 23 L. 196, FARMERS' ETC. NAT. BANK v. DEARING.

Syl. 1 (VIII, 603). Necessity for national banks is for Congress.

Approved in Christopher v. Norvell, 201 U. S. 225, 50 L. 736, 26 Sup. Ct. 502, married woman is liable to personal judgment for assessment as stockholder in national bank though local law prohibits married woman from binding herself personally.

Syl. 3 (VIII, 604). State cannot tax federal agencies.

See 101 Am. St. Rep. 165, note.

Syl. 8 (VIII, 605). Punishment under statute creating new offense.

Approved in Johnson v. Southern Pac. Co., 196 U. S. 17, 49 L. 369, 25 Sup. Ct. 158, equipment of locomotive and diner with automatic couplers of such different types that they cannot be coupled to each other automatically does not satisfy 27 Stat. 531, c. 196; Kuhn v. Kuhn, 125 Iowa, 451, 101 N. W. 152, Code, § 3386, prohibiting one taking or causing another to take life of another from inheriting or taking by will any part of deceased's estate, does not prohibit widow murdering husband from taking distributive share under Code, § 3366, as matter of contract; Casey v. St. Louis Transit Co., 116 Mo. App. 255, 91 S. W. 426, under Rev. St. 1899, § 2864, providing for forfeiture of fixed sum of $5,000 for wrongful death occurring through negligence of officers or employees of corporation, complaint seeking recovery of less sum, is bad; Esquibel v. Chaves, 12 N. M. 499, 78 Pac. 511, applying in prosecution under Comp. Laws 1897, § 1633, punishing circulation of ballot containing designating device of another party.

91 U. S. 37-44, 23 L. 200, BROWN v. PIPER.

Syl. 2 (VIII, 606). Patents—Application of old process.

Approved in Capewell v. Goldsmith, 138 Fed. 686, holding void Capewell patent No. 630,972, for stick pin retainer.

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Syl. 3 (VIII, 608). Patent infringement—Evidence of state of act.

Approved in Brookfield v. Elmer Glass Works, 144 Fed. 419, in suit for infringement, where defense is noninfringement, anterior patents can be used only to ascertain prior act and constitution of patent in suit.

Syl. 5 (VIII, 608). Judicial notice—Reference to scientific books.

Approved in Thomas v. St. Louis etc. R. Co., 149 Fed. 754, Thomas patent No. 570,148, for lateral support for sides and ends of cars, is void in face for want of novelty; Conderman v. Clements, 147 Fed. 917, holding Conderman patent No. 669,621, for improvement in pleasure wheels, void for lack of invention; Baker v. Duncombe Mfg. Co., 146 Fed. 746, holding void Baker patent Nos. 726,812, and 736,346, for process of treating coffee; Jackes-Evans Mfg. Co. v. Hemp, 140 Fed. 255, Evans patent No. 481,856, for stove-pipe having lock for engaging edges of each joint is not so lacking in invention as to be declared void on demurrer; Panzl v. Battle Island Paper etc. Co., 132 Fed. 609, court referred to standard publications for space of term "Chamotte" and held valid Panzl patent No. 644,367, for composition for lining vessels for storing corrosive liquids; Matter of Viemeister, 179 N. Y. 241, 103 Am. St. Rep. 859, 72 N. E. 99, 70 L. R. A. 796, upholding Laws 1900, p. 1484, § 2, excluding unvaccinated children from public schools.

Syl. 6 (VIII, 610). Judicial notice cautiously exercised.

Approved in McGill v. Michigan S. S. Co., 144 Fed. 793, where workman on steamer, knowing that oil tank partially filled with oil, leaving large air space above oil, drilled hole through top of tank by light of candle, which caused explosion, knowledge that space above oil was filled with explosive gas not imputed to him.

Syl. 8 (VIII, 611). Patent for preserving fish—Want of novelty.

Approved in Voightmann v. Weis etc. Cornice Co., 148 Fed. 853, holding void Voightmann patent No. 600,186, for automatically closing fireproof windows; Fitzgerald Meat Tree Co. v. Morris, 142 Fed. 765, holding void Ochmen patent No. 688,674, for meat tree.

91 U. S. 45-56, 23 L. 203, UPTON v. TRIBILCOCK.

Syl. 6 (VIII, 616). Corporations—Marking stock nonassessable.

Approved in In re Remington etc. Motor Co., 139 Fed. 776, under N. J. Laws 1896, c. 185, § 49, stockholders receiving stock in payment for property at agreed price less than par are assessable for benefit of creditors by bankruptcy court though stock purported to be fully paid up and nonassessable and property paid was of greater actual value than stock.

Syl. 9 (VIII, 617). Contracts—Omission to read before signing.

Approved in Burnes v. Burnes, 132 Fed. 493, family settlement with respect to division of estate not set aside because one of parties thereto

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signed without reading it; Colonial etc. Mtg. Co. v. Jeter, 71 Ark. 188, 71 S. W. 947, applying rule in action against lessee on rent notes; dissenting opinion in Gwaltney v. Provident Sav. Life Assur. Soc., 134 N. C. 560, 47 S. E. 125, majority holding one suing for recovery of premiums paid on life policy, on ground that he was, by misrepresentations of agent induced to accept policy different from that agreed on, may testify as to agreement with agent.

Distinguished in New Omaha etc. Light Co. v. Rombold, 68 Neb. 69, 93 N. W. 972, one to whom receipt in full settlement of all damages, has been, in order to procure his signature, misread so as to cause him to believe it is settlement of certain expenses only, may dispute its validity though he signed without reading it.

Syl. 10 (VIII, 617). Contracts—Rescission—Misrepresentations as to law.

Approved in Burk v. Johnson, 146 Fed. 214, where defendant assigned right to organize burial societies according to copyrighted plan in several states, misrepresentations by defendant as to his rights under copyright are not ground for cancellation of contract.

Syl. 13 (VIII, 618). Lack of contradiction makes law question.

Approved in Burk v. Johnson, 146 Fed. 216, where defendant, under misrepresentations as to rights under copyright, sold right to use copyrighted plan for establishment of burial societies, failure of complaint to ascertain rights during two months in which contract remained in escrow barred right to rescind for misrepresentations; Kimber v. Young, 137 Fed. 749, 70 C. C. A. 178, construing allegations in complaint for deceit in sale of bonds, that defendant represented knew bonds were good and would be paid; Greer Co. v. Texas, 197 U. S. 241, 49 L. 738, 25 Sup. Ct. 437, arguendo.

91 U. S. 56-64, 23 L. 220, SANGER v. UPTON.

Syl. 3 (VIII, 621). Bankruptcy—Ordering unpaid balance on stock.

Approved in Smathers v. Bank, 135 N. C. 417, 47 S. E. 896, where creditor's bill has been brought and receiver appointed, it is better practice to enforce stockholder's liability in such suit instead of by subsequent action by receiver.

Syl. 4 (VIII, 621). Stockholder's right to question corporation's bankruptcy decree.

Approved in Bennett v. Thorne, 36 Wash. 270, 78 Pac. 942, 68 L. R. A. 113, under Const., art. 12, § 11, imposing personal liability on stockholders of banking corporation for its debts, action against stockholders accrues on insolvency of bank.

Syl. 10 (VIII, 623). Corporations—Capital stock is fund for debts.

Approved in Tait v. Pigott, 32 Wash. 348, 73 Pac. 365, complaint by corporation's receiver alleging that defendant sold his stock to corporation and received certain sum out of company's assets therefor, and

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that corporation thereby attempted to reduce capital stock and that it was insolvent, is sufficient to recover amount paid.

Syl. 12 (VIII, 625). Corporations—Creditor's lien on capital stock.

Approved in Jahn v. Champagne Lumber Co., 147 Fed. 633, creditors' bill against stockholders of dissolved corporation seeking to hold them as trustees of property which they have divided among themselves to defraud creditors and seeking accounting as to unpaid subscriptions. is not multifarious; Easton Nat. Bank v. American Brick etc. Co., 69 N. J. Eq. 334, 335, 60 Atl. 58, bona fide purchasers of stock reciting it is fully paid up not bound to creditors on contract of original subscriber to pay par.

Syl. 18 (VIII, 628). Implied agreement to pay for stock in full.

Approved in In re Remington etc. Motor Co., 139 Fed. 776, under N. J. Laws 1896, c. 185, § 49, stockholders receiving stock in payment for property at agreed price less than par, are assessable for benefit of creditors by bankruptcy court though stock purported to be fully paid up and nonassessable, and property paid was of greater actual value than stock.

91 U. S. 65-72, 23 L. 384, WEBSTER v. UPTON.

Syl. 2 (VIII, 630). Capital stock is trust fund for creditors.

Approved in Vaughn v. Alabama Nat. Bank, 143 Ala. 578, 42 So. 65, stockholder purchasing stock at less than par is liable to corporate creditors for difference between purchase price and par value.

Syl. 13 (VIII, 633). Assignee of nonassessable stock liable for calls.

Approved in In re Remington etc. Motor Co., 139 Fed. 776, under N. J. Laws 1896, c. 185, § 49, stockholders receiving stock in payment for property at agreed price less than par, are assessable for benefit of creditors by bankruptcy court though stock purported to be fully paid up and nonassessable, and property was of greater actual value than stock; People's Home Sav. Bank v. Sadler, 1 Cal. App. 195, 81 Pac. 1031, where certificates transferred to defendant recited that they were only one-third paid, and also contained by-law that balance subject to call of directors, defendant assumed liability of assignors to corporation.

91 U. S. 72-91, 23 L. 224, UNITED STATES v. UNION PACIFIC R. R.

Syl. 3 (VIII, 634). Statutes—Intent gleaned from words.

Approved in Hartford Fire Ins. Co. v. State, 76 Ark. 309, 89 S. W. 44, under act Jan. 23, 1905, foreign insurance company which belonged to pool to fix insurance rates for places other than in Arkansas, is prohibited from doing business here; McDonald v. Doust, 11 Idaho, 40, 81 Pac. 69, holding void act of Feb. 28, 1905, as attempting to abolish an organized county; State v. Kelly, 71 Kan. 821, 81 Pac. 453, Laws 1905, p. 783, is void, as appropriating money for works of internal improvement; Funkhouser v. Spahr, 102 Va. 312, 46 S. E. 380, under

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Code 1887, § 3485, appellate court may decide cause where court is divided.

Syl. 7 (VIII, 636). Statutory construction—Title of act.

Approved in Lederer & Strauss v. Colonial Invst. Co., 130 Iowa, 158. 106 N. W. 358, under Code sections relating to party-walls owner of party-wall cannot extend beams of his building beyond center of wall

91 U. S. 92-105, 23 L. 208, NATIONAL BANK OF COMMERCE v. MERCHANTS' NAT. BANK.

Syl. 8 (VIII, 638). Rights of indorser of bill of lading.

See 105 Am. St. Rep. 366, note.

Syl. 9 (VIII, 638). Negotiability of bill of lading.

See 105 Am. St. Rep. 338, note.

Syl. 10 (VIII, 638). Delivery of goods on payment on draft.

See 105 Am. St. Rep. 374, note.

91 U. S. 114-121, 23 L. 235, SAWYER v. TURPIN.

Syl. 3 (VIII, 640). Bill of sale given as security for debt.

Approved in Tatman v. Humphrey, 184 Mass. 362, 100 Am. St. Rep. 562, 68 N. E. 845, 63 L. R. A. 738, in case of preference by way of unrecorded chattel mortgage, transfer dates from acquisition of property under mortgage.

Syl. 5 (VIII, 641). Bankruptcy—Bill of sale given as security.

Approved in Humphrey v. Tatman, 198 U. S. 94, 49 L. 958, 25 Sup. Ct. 567, taking possession of mortgaged property under unrecorded chattel mortgage, is not voidable preference though possession taken within four months of bankruptcy, if possession so acquired is good as against trustee under state law; Ludvigh v. Umstadter, 148 Fed. 321, where bankrupt and another bought two lots in common and later formed partnership as contractors but were unsuccessful, and parties built two houses on lots, and deeded one lot each to respective wives, houses being built partly with firm funds and partly with individual funds, bankrupt's trustee had no claim on lot conveyed to other partner's wife; In re Cutting, 145 Fed. 389, chattel mortgage to secure antecedent debt in renewal of prior mortgage, is not preference constituting act of bankruptcy, though additional property included, where mortgagor receives further present security; Stewart v. Hoffman, 31 Mont. 191, 193, 81 Pac. 3, 4, where principal gave surety right to take possession of certain personalty to be sold and proceeds applied to debt, but instrument not formally executed, and within four months of bankruptcy chattel mortgage on same property given surety, mortgage not preference; Christ v. Zehner, 212 Pa. St. 192, 61 Atl. 823, where bill of sale to secure money loaned and to be advanced, given, but possession not taken, but later within four months of vendee's bankruptcy, bill of sale

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indorsed to show that loan still due and possession given vendor, there was no preference.

Distinguished in In re Noel, 137 Fed. 700, 702, under Md. Gen. Laws, art. 21, §§ 13-16, requiring mortgages to be recorded within six months where renewal mortgage and original were not so recorded, last one, though recorded later, is void as to creditor's and mortgagor's bankruptcy trustee.

91 U. S. 122-127, 23 L. 258, JACKSON v. JACKSON.

Syl. 5 (VIII, 642). Trusts—Husband's purchase in wife's name.

Approved in In re Foss, 147 Fed. 792, where husband when free from debt paid consideration for land which was conveyed to wife, presumption is that voluntary settlement upon her was intended; Savage v. Savage, 141 Fed. 350, deed of gift by husband to wife at time when he was not indebted, and which was duly recorded, is valid as against his subsequent creditors in bankruptcy.

91 U. S. 127-134, 23 L. 260, BALTIMORE ETC. R. R. CO. v. TRUSTEES OF SIXTH PRESB. CHURCH.

Syl. 1 (VIII, 642). Bill of exceptions—Depositions in transcript.

Approved in United States v. Choctaw etc. R. R. Co., 3 Okl. 465, 41 Pac. 750, following rule; Metropolitan R. R. Co. v. Macfarland, 195 U. S. 330, 49 L. 223, 25 Sup. Ct. 28, errors in refusing requested instructions or refusing to set aside assessment in condemnation proceedings, not considered on writ of error, in absence of properly authenticated bill of exceptions, though transcript contains purported instructions refused and other papers.

91 U. S. 143-149, 23 L. 265, ATHERTON v. FOWLER.

Syl. 5 (VIII, 645). Writ of error to what court directed.

Approved in Kentucky v. Powers, 139 Fed. 490, criminal prosecution is removable where conviction reversed three times by state court and accused discriminated in selection of jury and under state law rulings with respect to juries are not reviewable.

91 U. S. 149-150, 23 L. 267, ROEMER v. SIMON.

Syl. 1 (VIII, 645). Rehearing below after appeal in equity.

Approved in Strand v. Griffith, 135 Fed. 741, circuit court of appeals cannot dismiss appeal on motion of appellant and remand cause with directions to permit amendment of pleading on showing that facts inadvertently omitted therefrom which was not known till after appeal taken.

91 U. S. 150-159, 23 L. 267, ROBERTS v. RYER.

Syl. 1 (VIII, 646). New use for old machine not invention.

Approved in Sloan Filter Co. v. Portland Gold Min. Co., 139 Fed. 26, holding void Sloan patent No. 587,874, for barrel filter for use in filter-

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ing precious metal solutions; Mallon v. Gregg, 137 Fed. 77, 69 C. C. A. 48, upholding Mallon patent No. 583,408, for automatic mechanism for unloading and feeding sugar cane.

Syl. 3 (VIII, 647). Extended application of old thought not invention.

Approved in Voightmann v. Weis etc. Cornice Co., 148 Fed. 853, holding void Voightmann patent No. 600,186, for automatically closing fire-proof windows.

91 U. S. 160-171, 23 L. 271, HALL v. LANNING.

Syl. 1 (VIII, 648). Jurisdiction of foreign court open to inquiry.

Approved in National Exchange Bank v. Wiley, 195 U. S. 270, 49 L. 190, 25 Sup. Ct. 70, judgment taken under warrant of attorney annexed to note, authorizing confession of judgment in favor of holder, is collaterally attackable where party in whose favor it was rendered is not owner of note; King v. Davis, 137 Fed. 227, federal court cannot vacate its judgment of former terms founded on false but apparently valid return of service of process; Cuykendall v. Doe, 129 Iowa, 457, 105 N. W. 700, applying rule to judgment confessed under power of attorney.

Syl. 8 (VIII, 649). Personal liability of nonresident partner.

See 103 Am. St. Rep. 312, note.

Syl. 11 (VIII, 650). Partner's contracts after dissolution of firm.

Approved in People's National Bank v. Wilcox, 136 Mich. 578, 100 N. W. 28, where mortgage is executed by survivor on firm property, to raise funds to pay firm debts, mortgagees have first lien on firm property as against personal creditors of surviving partner.

91 U. S. 171-199, 23 L. 275, SEWALL v. JONES.

Syl. 3 (VIII, 650). Infringing device need achieve as good result.

Approved in Regina Co. v. New Century Music Box Co., 138 Fed. 909, holding void Brachhausen & Reissner patent No. 500,371, for music box; Lourie Imp. Co. v. Lenhart, 130 Fed. 129, 64 C. C. A. 456, holding Lenhart patent No. 415,542, for attachment to breaking plows infringed by adjustable sliding plate attached by bolt and slot in plate to inner side of clip on side of plow.

91 U. S. 200-206, 23 L. 299, THE FREE STATE.

Syl. 3 (VIII, 652). Collision—Departure from navigation rules.

Approved in Lake Erie Transp. Co. v. Gilchrist Transp. Co., 142 Fed. 95, applying principle where one of two vessels violated passing agreement as to crossing courses.

91 U. S. 206-208, 23 L. 302, MITCHELL v. BOARD OF COMMRS.

Syl. 2 (VIII, 652). Restraining tax—Change to evade tax.

Approved in Sisler v. Foster, 72 Ohio St. 447, 74 N. E. 642, applying rule where legal title to property put in name of another by deed of

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trust; dissenting opinion in Monahan v. Monahan, 77 Vt. 154, 59 Atl. 175, 70 L. R. A. 935, majority holding complainant seeking to impress securities with trust, and alleging they were taken in defendant's name without his knowledge, not denied relief because of fraudulent purpose to avoid taxation by placing securities in defendant's name.

91 U. S. 208-224, 23 L. 302, THE SUNNYSIDE.

Syl. 6 (VIII, 653). Collision—Errors of one vessel as excuse.

Approved in The City of Portsmouth, 143 Fed. 859, where ferryboat collides with barge which had previously gone adrift and been picked up by tug and was in tow at time of collision, question of fault in allowing barge to drift is immaterial.

Syl. 9 (VIII, 654). Collision without fault—Damages.

Approved in The Jumna, 149 Fed. 173, exonerating all vessels for series of collisions following parting of tug's hawser.

Syl. 11 (VIII, 654). Collision—Vigilance and experience of lookout.

Approved in The Vedamore, 137 Fed. 847, 70 C. C. A. 342, large steamer navigating Chesapeake Bay on foggy night with lookout one hundred feet from stem in fault for collision with schooner whose fog signal though regularly sounded not heard by lookout till too late.

91 U. S. 225-238, 23 L. 308, POLLARD v. LYON.

Syl. 1 (VIII, 655). Slander—Words actionable per se.

Approved in McDonald v. Nugent, 122 Iowa, 653, 98 N. W. 507, words charging another with being afflicted with venereal disease are slanderous per se and proof of their utterance establishes malice without other evidence.

Syl. 8 (VIII, 656). Words not actionable per se—Special damages.

Approved in Victor Safe etc. Co. v. Deright, 147 Fed. 213, language in letter by competitor in disparagement of plaintiff's goods not actionable in absence of special damages.

91 U. S. 238-246, 23 L. 314, MUTUAL BEN. LIFE INS. CO. v. TISDALE.

Syl. 3 (VIII, 657). Conclusiveness of grant of administration.

Approved in Philip v. Heraty, 135 Mich. 455, 100 N. W. 187, grant of administration to alleged widow, is not conclusive as to widowhood which may be collaterally attacked by one who took no part in administration proceedings; Boehme v. Sovereign Camp, W. O. W., 98 Tex. 379, 380, 84 S. W. 424, where action on life policy depended on ground of suicide, finding at inquest, is not admissible.

91 U. S. 252-254, 23 L. 320, WRIGHT v. TIBBITTS.

Syl. 2 (VIII, 659). Contingent contract for presentation of claim.

Approved in Nutt v. Knut, 200 U. S. 21, 50 L. 363, 26 Sup. Ct. 216, illegality of clause in contract for prosecution of claim against

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government making payment of compensation lien on claim, does not avoid part of contract providing for compensation; Field v. Sammis, 12 N. M. 48, 73 Pac. 621, garnishee's liability to principal debtor is measure of liability to creditor.

91 U. S. 257-267, 23 L. 321, McMURRAY v. BROWN.

Syl. 4 (VIII, 611). Mechanics' lien arise by operation of law.

Approved in Great Southern etc. Hotel Co. v. Jones, 193 U. S. 550, 48 L. 788, 24 Sup. Ct. 576, upholding Ohio Rev. Stat., §§ 3184-3185a, giving mechanic's lien.

91 U. S. 270-274, 23 L. 346, MOORE v. UNITED STATES.

Syl. 2 (VIII, 662). Common law—Use in construing constitution.

Approved in South Carolina v. United States, 199 U. S. 450, 50 L. 265, 26 Sup. Ct. 110, United States may exact revenue license from dispensing agent of state which has taken charge of liquor business; Kepner v. United States, 195 U. S. 126, 49 L. 123, 24 Sup. Ct. 797, right of government appeal for acquittal in Philippine court of first instance, was taken away by 32 Stat. 691, c. 1396, for temporary government of Philippines; Schick v. United States, 195 U. S. 69, 49 L. 102, 24 Sup. Ct. 826, one prosecuted by information in federal court for violation of Oleomargarine Act of 1886, § 11, may waive jury.

Syl. 4 (VIII, 662). Comparison of hand writings.

Approved in Castor v. Bernstein, 2 Cal. App. 706, 84 Pac. 245, where assignment to plaintiff of claim sued on offered in evidence, release may be offered for comparison with assignor's signature on assignment, without further proof.

91 U. S. 275-283, 23 L. 347, WELTON v. MISSOURI.

Syl. 1 (VIII, 663). State occupation tax.

Approved in In re Sydow, 4 Ariz. 210, 211, 36 Pac. 216, upholding Rev. St., tit. 42, par. 2239, § 9, as amended in 1893, imposing license tax on dealers in merchandise excepting local farm products when sold by producer; Adams v. Mississippi Lumber Co., 84 Miss. 28, 36 So. 69, holding void Acts 1900, p. 44, § 8, imposing privilege tax on land, timber mill companies, and exempting sawmill operators do not ship out of state.

Distinguished in State v. Whitcour, 122 Wis. 116, 99 N. W. 469, holding void Rev. St. 1898, § 1570, as amended in 1901, imposing license tax on peddlers, and exempting certain specified classes.

Syl. 2 (VIII, 663). Occupation tax is tax on goods.

Approved in Kehrer v. Stewart, 197 U. S. 65, 49 L. 666, 25 Sup. Ct. 403, upholding Georgia act of 1900, taxing resident agents of non-resident meat packers; Bacon v. Locke, 42 Wash. 220, 33 Pac. 722, holding void Laws 1905, pp. 372, 373, imposing license tax on persons selling goods by sample after shipment into state.

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Syl. 4 (VIII, 664). Congress regulates commerce.

Approved in Howard v. Illinois C. R. Co., 148 Fed. 999, holding void 34 Stat. 232, c. 3073, making interstate carriers liable for negligence resulting in injury to employees.

Syl. 5 (VIII, 665). Commerce includes what.

Approved in Brooks v. Southern Pac. Co., 148 Fed. 991, and Howard v. Illinois C. R. Co., 148 Fed. 1000, both holding void 34 Stat. 232, c. 3073, making interstate carriers liable for negligence resulting in injury to employees.

Distinguished in dissenting opinion in Northern Securities Co. v. United States, 193 U. S. 392, 48 L. 723, 24 Sup. Ct. 436, majority holding combination of stockholders in two competing interstate railways to form stock-holding company to acquire controlling interest in each railway in exchange for its own stock violates anti trust act of 1890.

Syl. 8 (VIII, 666). Uniform regulation of interstate commerce.

Approved in Globe Elevator Co. v. Andrew, 144 Fed. 883, Laws Wis. Sp. Sess. 1905, p. 19, c. 12, providing for inspection and grading of grain at Superior, is void as to interstate shipments; Ex parte Deeds, 75 Ark. 545, 87 S. W. 1031, holding void Kirby's Digest, § 6886, imposing tax on peddlers, but exempting resident merchants; Commonwealth v. Caldwell, 190 Mass. 356, 76 N. E. 955, Rev. Laws, c. 65, §§ 15, 16, permitting sale by peddlers of agricultural products of United States without license, but forbidding unlicensed sales of such products of foreign countries, is void; Bacon v. Locke, 42 Wash. 217, 83 Pac. 721, holding void Laws 1905, pp. 372, 373, imposing license tax on persons selling goods by sample after shipment into state.

Syl. 10 (VIII, 668). When congressional protection of interstate commerce ceases.

Approved in Globe Elevator Co. v. Andrew, 144 Fed. 882, Laws Wis. Sp. Sess. 1905, p. 19, c. 12, providing for inspection and grading of grain at Superior, is void as to interstate shipments; Commonwealth v. Caldwell, 190 Mass. 357, 76 N. E. 955, Rev. Laws, c. 65, §§ 15, 16, permitting sale by peddlers of agricultural products of United States without license, but forbidding unlicensed sales of such products of foreign countries, is void; Gulf etc. Ry. Co. v. State, 97 Tex. 286, 78 S. W. 499, determining that shipment of grain lost interstate character where shipment not continuous; Standard Oil Co. v. Fredericksburg, 10 Va. 88, 2 S. E. 819, corporation selling oil which it brings from foreign state and mingles with general mass of property in state, is subject to city license tax.

Distinguished in American Steel etc. Co. v. Speed, 110 Tenn. 46, 100 Am. St. Rep. 814, 75 S. W. 1042, where foreign corporation shipped goods in original package to local agent and delivered in that form to customers, ninety per cent of goods going to jobbers outside of

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state, corporation was liable to merchant's tax imposed by act of 1901.

Syl. 11 (VIII, 669). Interstate commerce—Inaction by Congress.

Approved in Hart v. State, 100 Md. 607, 60 Atl. 460, acts 1904, p. 186, requiring carriers to provide separate coaches for negroes and whites, and making it an offense to refuse to occupy car to which passenger is assigned, is void as to interstate passengers.

Syl. 12 (VIII, 671). License tax on peddlers of foreign goods.

Approved in Kirven v. Virginia-Carolina Chemical Co., 145 Fed. 293, where foreign corporation sold goods to resident of state on order taken subject to its approval by local agent who took note payable in such state, it may sue on note though at time of taking it, it had not complied with state law authorizing it to do business in state; In re Sydow, 4 Ariz. 210, 36 Pac. 215, upholding Rev. St., tit. 42, par, 2237, § 9, as amended in 1893, imposing license tax on dealers in merchandise excepting local farm products when sold by producer.

91 U. S. 291-294, 23 L. 352, FORSYTHE v. KIMBALL.

Syl. 1 (VIII, 673). Notes—Parol evidence of contemporaneous agreement.

Approved in Earle v. Enos, 130 Fed. 470, parol agreement by bank made at time of delivery of accommodation note and its discount by bank that it would not look to maker for payment, is no defense to action on note; Bank v. Moore, 138 N. C. 532, 51 S. E. 80, in action by bank receiver on note, defendant cannot set up as defense agreement that he should not be liable on note.

91 U. S. 294-303, 23 L. 368, DOW v. HUMBERT.

Syl. 4 (VIII, 674). Damages are compensation for injury.

Approved in Mutual Life Assn. v. Ferrenbach, 144 Fed. 343, where life policy wrongfully canceled for nonpayment of premiums which were in form of assessments, and pending suit insured died, damages are amount of policy, less cost of carrying it to maturity.

91 U. S. 308-316, 23 L. 392, HOOVER v. WISE.

Syl. 1 (VIII, 67). Agent's knowledge is principal's.

Approved in Grier v. Tucker, 150 Fed. 664, where grocer had ceased to sell oleomargarine, but for accommodation of two customers sent orders in their names to manufacturer who sent goods to local branch, bill to customers and branch left packages at grocers for delivery to customers with other groceries, grocer not liable to tax as wholesaler under oleomargarine act.

Syl. 4 (VIII, 675). Principal liable for agent's fraud.

Approved in Kill v. Trenchard, 142 Fed. 22, holding principal liable for misrepresentations of agent in sale of timber where agent mis-

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represented boundaries of land, and purchaser deceived as to quantity of timber.

91 U. S. 330-340, 23 L. 424, SHEPLEY v. COWAN.

Syl. 4 (VIII, 678). Relation back of land patents.

Approved in United States v. Detroit Timber etc. Co., 200 U. S. 335, 50 L. 505, 26 Sup. Ct. 282, purchaser from patentee without notice of entryman's fraud is bona fide purchaser within Comp. St. 1901, p. 1545, though he acquired interest in land under contract for standing timber before patent issued; United States v. Anderson, 194 U. S. 399, 400, 48 L. 1039, 24 Sup. Ct. 716, government cannot retain, as against grantees of indemnity lands, money collected for wrongful removal of stone during period between selection and approval of selection; Miocene Ditch Co. v. Jacobsen, 146 Fed. 683, where complainant appropriated water rights and began construction of ditch, right to acquire right of way over mining claims located later not affected by fact that ditch not completed over claims till after location; Peyton v. Desmond, 129 Fed. 12, 63 C. C. A. 651, homestead patentee may recover value of timber wrongfully cut after initiation of claim, and prior to issuance of patent; Quinn v. Baldwin Star Coal Co., 19 Colo. App. 506, 76 Pac. 555, where land entered on certain day and later entryman permitted to amend entry as of date of entry, patents issued on amended entry related back to original entry; Nicholson v. Congdon, 95 Minn. 194, 103 N. W. 1036, where application for entry of lands accepted though not accompanied by purchase price, subsequent payment and issuance of patent perfected title as of date of application, and sale made between application and payment passed title; Washington Rock Co. v. Young, 29 Utah, 121, 80 Pac. 387, 110 Am. St. Rep. 666, where entry made in land office on faith of original survey, patent relates back to date of entry and is based on original survey; dissenting opinion in Sproat v. Durland, 2 Okl. 72, 35 Pac. 894, majority holding settlement on land covered by existing entry, which is relinquished as result of contest begun before such settlement, confers no settlement right.

Syl. 8 (VIII, 679). Public lands—When vested rights arise.

Approved in Hy-Yu-Tse-Mil-Kin v. Smith, 194 U. S. 414, 48 L. 1046, 24 Sup. Ct. 676, Indian residing on Umatilla reservation may insist on original selection made under Act 23, Stat. 340, c. 319, as against subsequent allottee, where department corrected mistake in refusing allotment, though he had selected other land afterward; Waldron v. United States, 143 Fed. 418, applying rule where at time 25 Stat. 892, c. 405, took effect, woman was residing on lands on ceded part of reservation, and within year she filed election to take allotment, but claim rejected and trust patent issued to another Indian who had later settled thereon; Tegarden v. Le Marchel, 129 Fed. 490, state statute giving defendant in ejectment right to recover value of improvements is not applicable where plaintiff claims under

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government patent issued after improvements made; Nicholson v. Congdon, 95 Minn. 193, 103 N. W. 1035, where application for entry of lands accepted though not accompanied by purchase price, subsequent payment and issuance of patent perfected title as of date of application, and sale made between application and payment passed title; McDonald v. Union Pac. R. Co., 70 Neb. 350, 97 N. W. 441, court cannot compel conveyance of lands subject to homestead entry, to one who has been denied privilege of such entry by land department; McAllister v. Hutchison, 12 N. M. 115, 75 Pac. 42, locator of mining claim has no such title or interest in same after conveyance and abandonment thereof, that community interest of wife attaches; dissenting opinion in Paine v. Foster, 9 Okl. 280, 60 Pac. 30, majority refusing to review findings of Secretary of Interior; dissenting opinion in Sproat v. Durland, 2 Okl. 52, 35 Pac. 888, majority holding settlement on land covered by existing entry which is relinquished as result of contest begun before such settlement, confers no settlement right.

Syl. 10 (VIII, 680). Conclusiveness of land officer's decisions.

Approved in Peyton v. Desmond, 129 Fed. 9, 63 C. C. A. 651, and Paine v. Foster, 9 Okl. 224, 252, 261, 53 Pac. 112, 121, 60 Pac. 25, both following rule; Miller v. Margerie, 149 Fed. 697, in suit to set aside deed by Alaska townsite trustee for fraud, complainant must allege facts showing that, without negligence on his part, he was prevented by fraud from appearing before trustee and showing right to enter property; Jones v. Hoover, 144 Fed. 220, equity will review acts of Land Department in its construction of law applicable to conditions prevailing, so as to give possession where necessary to complete purchase of lands; Cagle v. Dunham, 14 Okl. 615, 78 Pac. 562, equity will not set aside land department decision because perjury was committed at trial before department; Estes v. Simmons, 12 Okl. 544, 73 Pac. 305, denying equity jurisdiction where facts showing fraud consisting of perjury in land department trial do not show complainant could refute testimony; Cook v. McCord, 9 Okl. 209, 60 Pac. 500, findings of land department on question as to whether or not lot has been abandoned, are conclusive in absence of fraud or mistake; Barnes v. Newton, 5 Okl. 431, 48 Pac. 192, successful claimant in land department may enjoin adversary from interfering with possession and from further occupancy of premises; Wilbourne v. Baldwin, 5 Okl. 280, 47 Pac. 1050, denying right to enjoin Indian agent from removing homesteader from lands prior to disposal of lands by land department; Cummings v. McDermid, 4 Okl. 280, 44 Pac. 278, holding facts alleged insufficient to give court jurisdiction to set aside award of townsite board; King v. Thompson, 3 Okl. 647, 39 Pac. 467, applying rule to decisions of Oklahoma townsite trustees appointed under act of 1890; Adams v. Couch, 1 Okl. 34, 35, 39, 40, 26 Pac. 1015, 1016, 1017, while contest pending in land department ejectment does not lie; Prosser v. Finn, 41 Wash. 608, 84 Pac. 405, under Rev.

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St. U. S., § 452, special timber agent appointed by Commissioner of General Land Office cannot make timber culture entry.

Distinguished in Laramie Nat. Bank v. Steinhoff, 11 Wyo. 310, 71 Pac. 995, until patent issues courts cannot determine title.

91 U. S. 343-356, 23 L. 428, UNION PACIFIC R. R. v. HALL.

Syl. 4 (VIII, 683). Railroad bridges implied in railroad's charter.

Cited in Union Pac. R. R. Co. v. Mason City etc. R. R. Co., 199 U. S. 168, 50 L. 138, 26 Sup. Ct. 19, arguendo.

Syl. 6 (VIII, 683). Railroad building bridge may mortgage it.

Approved in Davis v. Cleveland etc. Ry. Co., 146 Fed. 411, cars owned by railroad and delivered by it to other companies loaded with freight for transportation to other states and returned loaded or empty to owner, are not attachable under laws of state into which they are carried; Arrison v. Company D, 12 N. D. 559, 98 N. W. 85, corporation organized under Laws 1897, p. 159, permitting incorporation by members of militia to erect armory, is subject to mechanic's lien laws.

Syl. 7 (VIII, 683). Mandamus to compel operation of railroad.

Approved in McCarthy v. Street Commissioners, 188 Mass. 340, 74 N. E. 660, refusing mandamus at suit of property owner to compel construction forthwith by city authorities of street laid out, merely because of delay in construction; Clement v. Graham, 78 Vt. 320, 63 Atl. 155, granting mandamus to compel auditor of accounts to permit inspection of vouchers on file in his office to private citizen; dissenting opinion in Strickland v. Knight, 47 Fla. 334, 36 So. 365, majority refusing to enjoin county commissioners from issuing liquor license at suit of individuals where special injury not shown. See 105 Am. St. Rep. 123, note.

91 U. S. 367-379, 23 L. 449, KOHL v. UNITED STATES.

Syl. 1 (VIII, 686). Condemnation of lands by government.

Approved in Town of Nachant v. United States, 136 Fed. 276, 69 L. R. A. 723, 70 C. C. A. 641, in condemnation proceedings by United States for land for governmental purposes, government cannot stand on local law as to rule of damages.

Syl. 9 (VIII, 688). Eminent domain—Appropriation for purchase.

Distinguished in Western Union Tel. Co. v. Pennsylvania R. R. Co., 195 U. S. 568, 569, 571, 574, 49 L. 322, 323, 324, 25 Sup. Ct. 133, telegraph companies not granted right of eminent domain or right to so occupy railroad rights of way by act of July 24, 1866.

Syl. 10 (VIII, 688). Eminent domain—Power of Secretary of Treasury.

Approved in United States v. Certain Lands in Narragansett, 145 Fed. 657, Secretary of War has discretionary right to determine what property necessary for improvement of harbors; dissenting opinion in Western Union Tel. Co. v. Pennsylvania R. R. Co., 195 U. S. 582,

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49 L. 327, 25 Sup. Ct. 133, majority holding telegraph companies not granted right of eminent domain or right to occupy railroad rights of way by act of July 24, 1866.

Syl. 11 (VIII, 689). Condemnation proceedings are suits at law.

Approved in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 247, 248, 49 L. 465, 466, 25 Sup. Ct. 251, affirming 130 Fed. 790, holding suit for condemnation of railway right of way by Kentucky railroad against citizen of another state, is removable; Metropolitan R. R. Co. v. Macfarland, 195 U. S. 328, 49 L. 222, 25 Sup. Ct. 28, writ of error is only mode of reviewing District of Columbia court of appeals judgment sustaining award in condemnation proceedings; Buckhannon etc. R. Co. v. Davis, 135 Fed. 709, 68 C. C. A. 345, where federal court had appointed receiver for railroad in liquidation proceedings, order requiring that suit against receiver to condemn crossing over railroad's right of way be brought in federal court is not interference with state's right of eminent domain; State v. Chittenden, 127 Wis. 494, 107 N. W. 508, independent proceeding commenced by certiorari in an action under Rev. St. 1898, § 2595, relating to place of trial of actions against state or its officers.

Syl. 12 (VIII, 689). Circuit court's jurisdiction in condemnation proceedings.

Approved in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 24, 49 L. 468, 2 Sup. Ct. 251, suit for condemnation of railway right of way by Kentucky railroad against citizen of another state, is removable.

91 U. S. 381-389, 23 L. 354, THE DOVE.

Syl. 4 (VIII, 691). Cross-bill defined.

Approved in Emery Co. v. Tweedie Trading Co., 143 Fed. 147, new and distinct matters not included in original libel, but arising out of separate transactions cannot be made subject matter of cross-libel in admiralty.

91 U. S. 389-405, 23 L. 237, COOKE v. UNITED STATES.

Syl. 1 (VIII, 691.) Responsibilities of government on commercial paper.

See 101 Am. St. Rep. 151, note.

Syl. 7 (VIII, 692.) Negligence of officials as barring government.

Approved in Walker v. United States, 139 Fed. 413, marshal rendering accounts against government for services of deputies, which have been allowed by accounting officers, cannot be compelled to refund years after expiration of office though allowances made under erroneous construction of law.

Syl. 8 (VIII, 692). Government not bound by payment of forged note.

Approved in Moore v. McGuire, 142 Fed. 808, under Ann. Code, Miss. 1892, § 3831, action of board created thereby determining that lands

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sold for taxes were not within state and refunding amount paid therefor to purchaser, does not conclude state.

91 U. S. 406-414, 23 L. 245, SCUDDER v. UNION NAT. BANK.

Syl. 2 (VIII, 93). Law governing validity of contracts.

Approved in Garrigue v. Kellar, 164 Ind. 680, 108 Am. St. Rep. 324, 69 L. R. A. 870, 74 N. E. 524, note executed in Illinois by married woman as surety, while domiciled there, is enforceable in Indiana, though payable at bank in latter state and laws thereof prohibit married woman's contract of suretyship; Ft. Wayne Trust Co. v. Sihler, 34 Ind. App. 12, 72 N. E. 498, note executed in Indiana, by married woman as surety, though secured by mortgage on land in Missouri, is void; Caldwell v. Seaboard Air Line Ry., 73 S. C. 465, 53 S. E. 754, in action by servant for personal injuries, where he entered into oral contract in state to work as brakeman in another state, and in latter state was promoted, it was for jury to say whether he was working under contract made in this state; Frasier v. Charleston etc. Ry., 73 S. C. 146, 52 S. E. 966, in action by consignee for damages to freight shipped from Georgia, where contract limiting liability is void unless signed by shipper at time of shipment, Georgia law governs as to existence of contract.

Syl. 3 (VIII, 695). Law governing performances of contracts.

Approved in Michaelsen v. Security Mut. Life Ins. Co., 150 Fed. 226, under New York law in case of anticipatory breach of contract by mutual life insurance company, remedy of insured is by bill in equity to compel recognition of contract or tender of payments due thereunder till maturity; Anglo-American Mtg. etc. Co. v. Wood, 143 Fed. 684, applying rule to right of plaintiff to join different causes of action in same suit; De Sonora v. Bankers' etc. Casualty Co., 124 Iowa, 585, 104 Am. St. Rep. 367, 100 N. W. 536, where policy intended to cover articles sent by mail recited that it was to cover shipments between United States and certain countries and insured located in Mexico, law of that country governed in determining who was adult within policy requiring packing of goods in presence of two adults; Western Union Tel. Co. v. McNairy, 34 Tex. Civ. 390, 78 S. W. 970, proof that common law prevails in New Mexico does not defeat action against telegraph company for mental anguish caused by failure of company to promptly deliver telegram sent from New Mexico to Texas; Brown v. Gates, 120 Wis. 355, 357, 98 N. W. 206, contract made in one state, to be performed in another, is governed as to its validity and effect by law of place of performance.

Syl. 4 (VIII, 696). Law governing remedies on contracts.

Approved in Clark v. Eltinge, 38 Wash. 382, 80 Pac. 559, 107 Am. St. Rep. 858, only exemptions to which married woman, as debtor, is entitled are those provided by law of state of suit.

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91 U. S. 423-426, 23 L. 249, EX PARTE FRENCH.

Syl. 1 (VIII, 697). Reversal of part of issues.

Approved in Anglo-American Land etc. Co. v. Lombard, 132 Fed. 735, 68 C. C. A. 89, applying rule in action to enforce stockholder's liability.

91 U. S. 426-442, 23 L. 286, NUDD v. BURROWS.

Syl. 10 (VIII, 699). Adoption of state practice.

Approved in Pittsburgh Ry. Co. v. Bloomer, 146 Fed. 722, instructions in action against street railway for injuries by being thrown by sudden starting of car while alighting, held to be mere expression of opinion is to effect of evidence; Swift v. Jones, 145 Fed. 491, in action at law in circuit court trial judge cannot even by consent of parties order trial before special master authorized to hear and pass on issues of fact and report findings to court; Williamson v. Liverpool etc. Ins. Co., 141 Fed. 59, Missouri rule that filing amended petition in compliance with erroneous order which struck out parts of original petition, is waiver of error, does not bind federal courts in that state; Clement v. Wilson, 135 Fed. 750, 68 C. C. A. 387, order setting aside verdict and granting new trial is not reviewable on error; Liverpool etc. Ins. Co. v. N. & M. Friedman Co., 133 Fed. 716, 66 C. C. A. 543, separation of jury after submission of cause in federal court does not vitiate verdict.

91 U. S. 452-454, 23 L. 413, TOWNSEND v. TODD.

Syl. 1 (VIII, 700). Following state statutory construction.

Approved in dissenting opinion in James v. Gray, 131 Fed. 414, 65 C. C. A. 385, majority holding loan by wife to husband from separate estate is provable in bankruptcy without regard to its enforceability under state law.

91 U. S. 454-474, 23 L. 356, GRAND TRUNK R. R. v. RICHARDSON.

Syl. 1 (VIII, 701). Railroads—Permitting mills on right of way.

Approved in McLucas v. St. Joseph etc. Co., 67 Neb. 613, 97 N. W. 313, statute of limitations is no defense to action by railroad to recover part of right of way acquired from government for construction of railroad; Osgood v. Central Vermont Ry. Co., 77 Vt. 344, 60 Atl. 140, 70 L. R. A. 930, where railroad leased piece of roadway to plaintiff for coal shed and latter agreed to indemnify railroad for damage or loss caused by negligence of its servants, railroad not liable for negligent running of engine into shed built on leased premises.

Syl. 4 (VIII, 701). Negligence defined.

Approved in Continental Ins. Co. v. Chicago etc. Ry. Co., 97 Minn. 480, 107 N. W. 554, where, in action for damages caused by fire from locomotive, plaintiff showed prima facie negligence, expert evidence

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that engine operated in careful manner not sufficient to take case from jury.

Syl. 6 (VIII, 703). Locomotive fires—Identity of particular locomotive.

Approved in Alabama etc. Ry. Co. v. Aetna Ins. Co., 82 Miss. 781, 35 So. 306, and Louisville etc. R. R. Co. v. Fort, 112 Tenn. 447, 80 S. W. 433, both following rule; Toledo etc. R. R. Co. v. Star etc. Mills Co., 146 Fed. 957, under Rev. St. Ohio 1906, §§ 3365, 3366, company not required to overcome presumption of negligence arising from fire by preponderance of evidence bearing on negligence; Orient Ins. Co. v. Northern Pacific Ry. Co., 31 Mont. 509, 78 Pac. 1037, in action for burning property by locomotive sparks, witness may testify how sparks thrown by engine at time compared with sparks thrown by other engines; Louisville etc. R. R. Co. v. Short, 110 Tenn. 718, 77 S. W. 937, in action for fire caused by locomotive sparks, evidence of other fires set by other engines of similar construction, is admissible; Gibbs v. St. Louis etc. R. R. Co., 104 Mo. App. 284, 78 S. W. 837, arguendo.

Distinguished in Crissey etc. Lumber Co. v. Denver etc. R. R. Co., 17 Colo App. 296, 68 Pac. 676, where particular engine is identified, evidence of fires ignited by other engines is inadmissible; Spraigue v. Atchison etc. Ry. Co., 70 Kan. 368, 78 Pac. 831, where there is no issue as to emission of sparks by particular engine, evidence showing that other engines had emitted sparks shortly before and immediately after fire is inadmissible.

Syl. 10 (VIII, 704). Liberal construction of remedial statutes.

Approved in Conner v. Manchester Assur. Co., 130 Fed. 746, 70 L. R. A. 106, 65 C. C. A. 127, under policy exempting insurer for loss occasioned by civil authority company not liable for loss caused by spreading of fire started on other property by lawful order of supervisors to destroy injurious insects; Phillips v. Durham etc. R. R. Co., 138 N. C. 20, 50 S. E. 464, railroad liable for damage to property not adjacent to right of way where fire traversed land of intermediate owners.

Syl. 12 (VIII, 704). Proximate cause is for jury.

Approved in Cincinnati etc. Ry. Co. v. South Fork Coal Co., 139 Fed. 531, railroad is liable to owner of lumber piled on right of way with its consent for loss by fire occurring through its negligence; Southern Ry. Co. v. Wilson, 138 Ala. 522, 35 So. 565, keeping cotton on railroad's platform not negligence as matter of law where there was no notice that locomotives equipped and operated so as to endanger cotton; Kansas City etc. Ry. Co. v. Blaker, 68 Kan. 250, 75 Pac. 73, 64 L. R. A. 81, where property along right of way negligently set on fire by railroad and fire communicated to adjacent property, railroad liable for loss of latter.

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91 U. S. 474-479, 23 L. 388, OSBORN v. UNITED STATES.

Syl. 1 (VIII, 704). Pardon obliterates crime.

Approved in Fite v. State, 114 Tenn. 656, 88 S. W. 943, holding void Shannon's Code, § 7423, authorizing commissioners of county workhouse to allow credits for good behavior, but failing to prescribe schedule of credits; State v. Lewis, 111 La. 696, 35 So. 817, arguendo.

91 U. S. 479-487, 23 L. 363, LLOYD v. FULTON.

Syl. 3 (VIII, 705). Following state decisions—Rules of property.

Approved in In re Wood, 147 Fed. 878, under Wisconsin laws homestead owned by bankrupt is exempt though purchased while insolvent with proceeds of nonexempt property; York v. Washburn, 129 Fed. 567, 64 C. C. A. 132, oral contract for letting of property located in Minnesota for more than one year is not void, though unenforceable, and lessee cannot recover earnest money.

Syl. 4 (VIII, 706). Fraudulent conveyance—Presumption from gift.

Approved in Polk Co. Nat. Bank v. Scott, 132 Fed. 900, 66 C. C. A. 51, voluntary gift by husband to wife at time when he was liable with others on notes secured by property owned by makers jointly and of greater value than notes is not fraudulent; Campbell v. Campbell, 129 Iowa, 319, 105 N. W. 584, applying rule in action to set aside gift from parent to child alleged to be fraudulent as to creditors.

91 U. S. 489-495, 23 L. 374, MILWAUKEE ETC. R. R. v. ARMS.

Syl. 4 (VIII, 707). When exemplary damages allowed.

Approved in Otto Kuehne Press Co. v. Allen, 148 Fed. 669, 671, under Mo. Rev. St. 1899, § 2866, exemplary damages not recoverable on mere allegation that defendant's negligence, causing death, was gross; Murray v. Pannaci, 130 Fed. 531, 65 C. C. A. 153, one removing sand from beach in front of plaintiff's lot in belief of legal right and who ceased on plaintiff's objection, is not liable for exemplary damages; Western Union Tel. Co. v. Cashman, 132 Fed. 807, 65 C. C. A. 607, telegraph company not liable in exemplary damages for transmitting libelous message where no malice shown; Jackson v. American etc. Telegraph Co., 139 N. C. 356, 51 S. E. 1018, 70 L. R. A. 738, punitive damages allowed for wrongful arrest made solely to put plaintiff temporarily out of way so as to prevent his resistance to entry on his land; Atchison etc. R. R. Co. v. Chamberlain, 4 Okl. 547, 548, 46 Pac. 500, applying rule in action against railroad for injuries sustained while alighting from train in dark at unlighted station. See 101 Am. St. Rep. 761, note.

Syl. 5 (VIII, 709). Gross negligence defined.

Approved in Kelly v. Malott, 135 Fed. 76, 67 C. C. A. 548, where declaration characterized defendant's negligence as gross, plea setting up contract exempting defendant from negligence is good; Chicago etc. Ry. Co. v. Hamler, 215 Ill. 539, 541, 106 Am. St. Rep. 187, 74 N. E. 710,

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where Pullman porter injured by blowing up of locomotive, contract with Pullman company releasing railroad from liability for injuries is complete defense though negligence was gross; Raymond v. Portland R. R. Co., 100 Me. 534, 62 Atl. 605, holding erroneous instruction that if conductor could by exercise of great care discover what passengers wanted to get off at crossing that would be equivalent to actual knowledge; Charlotte Trouser Co. v. Seaboard Air Line Ry. Co., 139 N. C. 386, 51 S. E. 974, where carrier knew that trunks of passenger contained samples but received them as baggage it was liable for loss sustained through lack of ordinary care after passenger had had reasonable time to remove same; dissenting opinion in Davenport v. Southern Ry. Co., 135 Fed. 967, 68 C. C. A. 444, majority holding complaint against nonresident railroad and its resident servants, to recover for death caused by negligent acts of servants, does not state separable controversy removable by railroad alone.

91 U. S. 495-496, 23 L. 377, WESTERN UNION TEL. CO. v. EYSER.

Syl. 1 (VIII, 710). Exemplary damages when allowed.

Approved in Western Union Tel. Co. v. Cashman, 132 Fed. 807, 65 C. C. A. 607, telegraph company not liable to punitive damages for transmission of libelous message where no malice shown.

91 U. S. 496-503, 23 L. 377, MAYER v. HELLMAN.

Syl. 4 (VIII, 711). Bankruptcy—Assignments for creditors.

Approved in McIntire v. Jennings, 38 Wash. 123, 80 Pac. 280, under Bankr. Act, 1898, § 67e, assignment for benefit of creditors made by bankrupt more than four months before petition is not avoidable by trustee in bankruptcy.

Syl. 5 (VIII, 711). Bankruptcy—State assignment law not suspended.

Approved in Downer v. Porter, 116 Ky. 426, 76 S. W. 136, under Ky. St. 1899, § 1910, trustee under assignment for creditors could sue to bring property previously conveyed into trust fund, though bankruptcy act in force; Hilliard v. Burlington Shoe Co., 76 Vt. 60, 56 Atl. 284, assignment for creditors under state assignment act is not void unless seasonably impeached by bankruptcy proceedings.

91 U. S. 503-510, 23 L. 398, EARLE v. McVEIGH.

Syl. 1 (VIII, 711). Notice is essential to jurisdiction.

Approved in Chatham v. Mansfield, 1 Cal. App. 302, 82 Pac. 345, upholding Code Civ. Proc., § 1119, providing for substituted service where person whose right to office is contested cannot be found.

Syl. 2 (VIII, 711). Judgments without jurisdiction are void.

Approved in King v. Davis, 137 Fed. 208, under Va. Code 1904, p. 1684, authorizing substituted service by delivery at defendant's usual abode and by giving information of its purport to wife or any person found there who is member of family, return showing service by leaving

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copy with wife but not stating that she was member of family, is sufficient and judgment thereon vacated on motion to vacate default judgment in scire facias proceedings.

Syl. 3 (VIII, 712). Constructive notice, when allowed.

Approved in Johnson v. Hunter, 147 Fed. 135, under Ark. Laws 1895, p. 88, for enforcement of payment of levee taxes, affidavit that defendant is nonresident of county and absent therefrom and that there is no occupant of land, is prerequisite to service by publication; King v. Davis, 137 Fed. 206, under Va. Code 1904, p. 1684, authorizing substituted service by posting on "front" door return showing service by posting on "door" does not show valid service.

91 U. S. 510-516, 23 L. 401, AETNA LIFE INS. CO. v. FRANCE.

Syl. 1 (VIII, 712). Insurance—What is material misrepresentation.

Approved in Atlas Red. Co. v. New Zealand Ins. Co., 138 Fed. 499, construing fire policy containing "loss payable" indorsement with reference to waiver of provision against encumbrances; Taylor v. Grand Lodge A. O. U. W., 96 Minn. 446, 105 N. W. 410, where laws of beneficial order restricted membership to those under forty-five years, false understatement in application of age by one over such age avoided certificate; Thomas v. Travelers' Ins. Co., 13 N. D. 450, 101 N. W. 901, applying rule where life policy provided that it was to take effect only when first premium paid while insured in good health, and premium paid while insured suffered from latent disease; Willoughby v. Fidelity etc. Co., 16 Okl. 554, 85 Pac. 716, applying rule in construing bank official's bond.

Distinguished in Rupert v. Supreme Court U. O. F., 94 Minn. 295, 102 N. W. 716, holding where questions as to physical condition include trivial ailments which do not affect risk they are not warranties; Collins v. Metropolitan Life Ins. Co., 32 Mont. 338, 108 Am. St. Rep. 578, 80 Pac. 610, where insured warranted he was not connected with sale of liquor, proof that he occasionally waited on customers of saloon keeper as favor merely and without compensation, is not breach of warranty.

91 U. S. 516-521, 23 L. 414, LATHROP v. DRAKE.

Syl. 2 (VIII, 714). Bankruptcy jurisdiction—Suits by assignee.

Approved in Bush v. Elliott, 202 U. S. 480, 50 L. 1116, 26 Sup. Ct. 668, diversity of citizenship not necessary in circuit court suit by bankruptcy trustee for moneys due bankrupt at time of adjudication where bankrupt could have sued in federal court; Doroshow v. Ott, 134 Fed. 742, 67 C. C. A. 644, decree in equity suit in district court by bankruptcy trustee against adverse claimant to property is not reviewable by circuit court of appeals under Bankr. Act, § 24b.

Syl. 4 (VIII, 714). Bankruptcy—Citizenship—Suit by assignee to recover assets.

Approved in In re Benedict, 140 Fed. 58, where receiver appointed in involuntary proceedings, district court of another district in which prop-

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erty of bankrupt is situated may appoint ancillary receiver to preserve property pending selection of trustee.

91 U. S. 521-526, 23 L. 403, EYSTER v. GAFF.

Syl. 4 (VIII, 715). Bankruptcy assignee bound by foreclosure.

Approved in Miller v. Rickey, 146 Fed. 586, corporation organized by defendant in federal court to which he has, pending suit, conveyed property subject of litigation may be enjoined from prosecuting suit in state court for determination of rights therein; In re Martens, 144 Fed. 823, under Bankr. Act, § 70a, where pledgor converted securities into money pursuant to contract rights he may prove unsatisfied balance of claim; King v. Davis, 137 Fed. 240, holding Va. Code 1904, p. 1903, relating to effect of lis pendens on bona fide purchasers does not apply to federal courts; Rothschild v. Leonhard, 33 Ind. App. 459, 71 N. E. 675, where suit brought to reform deed executed by one having legal title and record title was in defendant, purchaser from defendant pendente lite chargeable with notice though no lis pendens filed; Moulton v. Kolodzik, 97 Minn. 425, 107 N. W. 155, construing law of lis pendens.

Syl. 5 (VIII, 716). Bankruptcy adjudication—Effect on other proceedings.

Approved in Skilton v. Codington, 185 N. Y. 85, 77 N. E. 791, where trustee sold bankrupt's personalty, which was covered by mortgage, under order of court, and reserved out of proceeds amount to pay liens which might be established against property, mortgagee could sue trustee in state court to establish claim; Jensen-King Bird Co. v. Williams, 35 Wash. 165, 76 Pac. 935, federal bankruptcy law did not suspend jurisdiction of state courts in insolvency where no bankruptcy proceedings instituted respecting matter in controversy.

Syl. 7 (VIII, 718). Intervention by bankrupt's assignee.

Approved in Linstroth Wagon Co. v. Ballew, 149 Fed. 964, where prior to involuntary petition, claimant sued in state court for recovery of personalty fraudulently purchased by bankrupt and property seized, subsequently appointed bankruptcy trustee who intervened is concluded by decree therein; Sellers v. Hayes, 163 Ind. 430, 72 N. E. 122, sale, made in defiance of Burns' Ann. St. 1901, § 6637a, et seq., of stock of goods, cannot be impeached by seller's bankruptcy trustee.

91 U. S. 526-536, 23 L. 416, GOULD v. EVANSVILLE ETC. R. R. CO.

Syl. 2 (VIII, 719). Replication after overruling demurrer as waiver.

Approved in Morris v. Dunbar, 149 Fed. 407, where demurrer to declaration sustained with leave to discontinue on payment of costs, but no discontinuance had nor judgment entered, writ of error did not lie.

Syl. 7 (VIII, 720). To what res adjudicata applies.

Approved in United States etc. Co. v. Bradley, 143 Fed. 530, decree of dismissal for failure to prosecute is not res adjudicata; Ayres v.

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Cone, 138 Fed. 781, where validity of claim of petitioning creditor in involuntary bankruptcy put in issue by bankrupt's answer and issue determined in favor of creditor, claim cannot be contested when filed for allowance before referee; Belcher Land Mortgage Co. v. Norris, 34 Tex. Civ. 113, 78 S. W. 392, on foreclosure of mortgage where usury set up as defense, pleading showing former judgment sustaining validity of judgment lien is sufficient plea of res adjudicata.

Syl. 8 (VIII, 720). Conclusiveness of judgment on demurrer.

Approved in Lockhart v. Leeds, 12 N. M. 167, 76 Pac. 315, following rule; Coram v. Ingersoll, 148 Fed. 173, dismissal by Montana court on sustaining statutory objection to introduction of any evidence under complaint on ground that it did not state facts sufficient to constitute cause of action is res adjudicata; Board of County Commrs. v. Cross, 12 N. M. 75, 73 Pac. 616, where demurrer to complaint sustained in determination of which material issues had to be passed on, and dismissal entered on refusal to amend, judgment is bar to later action on same cause of action.

Syl. 10 (VIII, 721). Judgment on demurrer, when not bar.

Approved in Brakefield v. Lucas, 10 Okl. 587, 64 Pac. 11, judgment that one defendant recover costs and that there is no joint liability does not bar separate action by same plaintiff against such defendant for conversion of same subject matter; Duke v. Postal Telegraph Co., 71 S. C. 101, 50 S. E. 677, where complaint in second action for damages supplies allegations, omission of which rendered first complaint demurrable, sustaining of demurrer to first complaint is not res adjudicata; State v. McEldowney, 54 W. Va. 701, 47 S. E. 652, dismissal of one suit not bar to second suit stating facts not alleged in first bill; Frye v. Miley, 54 W. Va. 332, 46 S. E. 138, suit to set aside fraudulent conveyance for legal demand by creditor at large before debt is due must be dismissed without prejudice.

91 U. S. 536-540, 23 L. 420, LOWER v. UNITED STATES.

Syl. 3 (VIII, 722). Mandamus to compel audit for taxation.

See 98 Am. St. Rep. 879, note.

91 U. S. 540-557, 23 L. 440, BARNES v. DISTRICT OF COLUMBIA.

Syl. 1 (VIII, 723). Powers of municipality dependent on legislature.

See 101 Am. St. Rep. 170, note.

Syl. 6 (VIII, 723). Who are municipal officers.

Approved in dissenting opinion in Ex parte Lewis, 45 Tex. Cr. 38, 108 Am. St. Rep. 929, 73 S. W. 823, majority holding void Galveston special charter of 1904. See 108 Am. St. Rep. 166, note.

Syl. 8 (VIII, 724). Municipality liable for acts of boards.

Approved in Denver v. Spencer, 34 Colo. 276, 82 Pac. 592, 2 L. R. A. (N. S.) 147, city liable for injuries sustained by fall of park stand

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negligently constructed by park commissioners; Hourigan v. Norwich, 77 Conn. 365, 59 Atl. 489, holding city liable for wrongful death by negligence of agents in enlargement of city water reservoir.

Syl. 9 (VIII, 724). Liability of cities for negligent construction.

Approved in City of Guthrie v. Swan, 5 Okl. 783, 51 Pac. 564, following rule; Krause v. Juneau, 2 Alaska, 635, holding Juneau liable for injuries due defective sidewalk; Carson v. Genesee, 9 Idaho, 256, 108 Am. St. Rep. 127, 74 Pac. 865, cities incorporated under general laws of Idaho are liable for injuries caused by defective sidewalk; Matheny v. Aiken, 68 S. C. 181, 47 S. E. 62, remedy given by Code 1902, §§ 2008, 2012, to private person whose property outside of city is damaged by sewage emptying into stream is exclusive and such person cannot sue city for tort or to abate nuisance; dissenting opinion in South Carolina v. United States, 199 U. S. 472, 50 L. 274, 26 Sup. Ct. 110, majority holding United States may exact revenue license from dispensing agents of state which has taken charge of liquor business. See notes 108 Am. St. Rep. 159; 103 Am. St. Rep. 261.

Syl. 10 (VIII, 726). Scope of municipality's liability.

Approved in In re School Committee, 26 R. I. 166, 58 Atl. 629, upholding Pub. Laws 1903, p. 33, c. 1101, abolishing school districts and vesting property thereof in towns.

91 U. S. 557, 23 L. 445, MAXWELL v DISTRICT OF COLUMBIA.

Syl. 1 (VIII, 727). Liability of municipality for torts.

Approved in Matheny v. Aiken, 68 S. C. 181, 47 S. E. 62, remedy given by Code 1902, §§ 2008, 2012, to private person whose property outside of city is damaged by sewage emptying into stream, is exclusive and such person cannot sue city for tort or to abate nuisance.

91 U. S. 557, 558, 25 L. 446, DANT v. DISTRICT OF COLUMBIA.

Syl. 1 (VIII, 727). Liability of municipality for torts.

Approved in Matheny v. Aiken, 68 S. C. 181, 47 S. E. 62, remedy given by Code 1902, §§ 2008, 2012, to private person whose property outside of city is damaged by sewage emptying into stream, is exclusive and such person cannot sue city for tort or to abate nuisance.

91 U. S. 566-569, 23 L. 448, UNITED STATES v. NORTON.

Syl. 1 (VIII, 728). Money order act not revenue law.

Distinguished in Bryant Bros. Co. v. Robinson, 149 Fed. 325, suit in state court against defendant as postmaster is reasonable.

Syl. 2 (VIII, 728). What are revenue laws.

Approved in Brown v. Elder, 32 Colo. 535, 77 Pac. 856, Sess. Laws 1902, c. 3, relating to revenue does not contain more than one subject though it taxes inheritances as well as property.

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Syl. 3 (VIII, 728). Limitations—Embezzlement of money order office moneys.

Distinguished in State v. Snyder, 182 Mo. 504, 82 S. W. 24, 66 L. R. A. 490, special plea of limitations by defendant in criminal prosecution does not entitle him to separate preliminary trial of plea.

91 U. S. 570-577, 23 L. 455, MEYER v. ARTHUR.

Syl. 1 (VIII, 728). Duties—Manufactures of metal defined.

Approved in Von Bernuth v. United States, 133 Fed. 801, imitation silk yarn made from cotton waste dutiable as silk yarn.

91 U. S. 584-586, 23 L. 433, HALDEMAN v. UNITED STATES.

Syl. 3 (VIII, 729). Judgment—What is nonsuit.

Approved in Wetmore v. Crouch, 188 Mo. 655, 87 S. W. 956, dismissal for failure to furnish additional security for costs is nonsuit within Rev. St. 1899, § 4285, providing for new action in one year after nonsuit; Lindsay v. Allen, 112 Tenn. 652, 82 S. W. 174, voluntary dismissal by consent is not bar to another action.

Syl. 4 (VIII, 729). Nonsuit as bar.

Approved in Lindsay v. Allen, 112 Tenn. 652, 653, 654, 82 S. W. 174, voluntary dismissal by consent is not bar to another action.

91 U. S. 587-594, 23 L. 328, TWIN LICK OIL CO. v. MARBURY.

Syl. 1 (VIII, 730). Relation of director to corporation is fiduciary.

Approved in In re Castle Braid Co., 145 Fed. 230, 235, upholding contract between corporation and directors for purchase of latter's stock; Martin v. Santa Cruz Water Storage Co., 4 Ariz. 175, 36 Pac. 37, action of three of five corporation directors in voting one of themselves salary as secretary is void; McConnell v. Combination Min. etc. Co., 30 Mont. 258, 104 Am. St. Rep. 703, 76 Pac. 200, holding void resolution of four directors voting three directors salaries, predicated on by-laws previously passed by five directors including four first mentioned.

Syl. 2 (VIII, 731). Contracts between fiduciaries are voidable.

Approved in Beach v. McKinnon, 148 Fed. 736, bill by receiver of corporation against director for accounting as to notes payable to corporation and transferred to defendant, merely alleging that notes were property of corporation, is insufficient.

Distinguished in Attalla Iron Ore Co. v. Virginia etc. Coke Co., 111 Tenn. 534, 77 S. W. 775, setting aside contract between corporation and new company secretly formed by its managers and another.

Syl. 3 (VIII, 732). Ratification of contracts between fiduciaries.

Approved in Kessler v. Ensley Co., 129 Fed. 402, contract by which officers have obtained property of corporation by fraud may be ratified by directors and disinterested majority of stockholders.

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Syl. 4 (VIII, 732). Directors represent shareholders.

Approved in Hearst v. Putnam Min. Co., 28 Utah, 198, 107 Am. St. Rep. 698, 77 Pac. 757, 66 L. R. A. 784, stockholders cannot in own right sue to set aside conveyance on ground of fraud giving rise to trust.

Syl. 7 (VIII, 732). Director's contract with corporation.

Approved in Pacific Vinegar etc. Wks. v. Smith, 145 Cal. 369, 104 Am. St. Rep. 42, 78 Pac. 554, president of corporation cannot purchase notes payable to corporation and indorse them to himself individually; Schnittger v. Old Home etc. Min. Co., 144 Cal. 607, 78 Pac. 10, upholding loan by certain directors to corporation where matter carried by sufficient vote of other directors, though lending members voted for transaction; Griffith v. Blackwater Boom etc. Co., 55 W. Va. 615, 48 S. E. 446, 69 L. R. A. 124, determining rule for compensation where director made contract with corporation which was partly executed and later abrogated by court at suit of stockholders.

Syl. 8 (VIII, 734). Director may purchase at foreclosure.

Approved in Burns v. Cooper, 140 Fed. 277, guardian's sale of ward's property under order of court is voidable where guardian procures sale for purpose of transferring title to himself; Marquam v. Ross, 47 Or. 414, 83 Pac. 862, trust company holding title in trust to manage encumbered property and making advances under contract, could purchase at foreclosure sale under prior mortgage.

Syl. 9 (VIII, 734). Laches—Rescission of contract for fraud.

Approved in Arbuckle v. Kelley, 144 Fed. 278, refusing to set aside tax sale for irregularities after lapse of eighteen years where they have become valuable; Ryason v. Dunten, 164 Ind. 96, 73 N. E. 77, applying rule where during minority of cotenant other cotenant purchased at foreclosure sale; Sunter v. Sunter, 190 Mass. 456, 77 N. E. 498, suit by wards to set aside sale of land by guardian indirectly to himself not barred though not brought within statutory time where brought soon after learning of fraud; Brown v. Kemmerer, 214 Pa. 522, 63 Atl. 823, six years' delay in bringing suit to set aside execution sale for fraud or treat transaction as trust and standing by while another dealt with property in manner inconsistent with trust is laches.

Syl. 10 (VIII, 736). Rescission—Matters considered in determining laches.

Approved in Patterson v. Hewitt, 11 N. M. 19, 66 Pac. 556, 55 L. R. A. 658, applying rule where there was eight years' delay in seeking to enforce trust in mining claims; Griffith v. Blackwater Boom Co., 55 W. Va. 619, 48 S. E. 448, 69 L. R. A. 124, determining rule for compensation where director made contract with corporation which was partly executed and later abrogated by court at suit of stockholders.

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Syl. 11 (VIII, 736). Laches—Fraud—Speculative delay not permitted.

Approved in Kessler v. Ensley, 141 Fed. 169, where former director bought land of trustees of land company to whom property was conveyed to sell to pay debts, and he sold lots, built town, and made improvements, stockholders barred, by four years' delay, from setting aside purchase; Patterson v. Hewitt, 11 N. M. 31, 66 Pac. 651, 55 L. R. A. 658, applying rule to eight years' delay in seeking to enforce trust in mining claims.

Syl. 12 (VIII, 736). Fraud—Fluctuating values—Prompt rescission.

Approved in Patterson v. Hewitt, 195 U. S. 319, 49 L. 218, 25 Sup. Ct. 35, affirming 11 N. M. 26, 33, 66 Pac. 559, 561, 55 L. R. A. 658, applying rule to eight years' delay in seeking to enforce trust in mining claims; Stevens v. McChrystal, 150 Fed. 89, where applicant for mining patent agreed to convey to contestant portion of property on demand for deed after issuance of patent on payment of certain sum, five years' delay in demand and tender bars specific performance; Socrates Quicksilver Mines v. Carr Realty Co., 130 Fed. 298, 64 C. C. A. 539, applying rule where one locator sought relief against other locators of mining claim for fraud; Cole v. Birmingham Union Ry. Co., 143 Ala. 435, 39 So. 405, suit by stockholder in street railroad to set aside sale of property to another company for its shares of stock bought ten years after transfer and two years after knowledge, is barred; Hall v. Nash, 33 Colo. 507, 81 Pac. 251, applying rule where stockholder had knowledge of surrender of mining lease by corporation and obtaining other leases in which president was interested; Bridley v. Johnson, 11 Idaho, 700, 83 Pac. 931, applying rule where one executed note payable in one year secured mortgage on unpatented mine, and note not paid for twelve years after other party had done assessment and development work.

Distinguished in Hill v. Hall, 191 Mass. 268, 77 N. E. 837, where client sued attorneys to rescind sale of bonds seven months after completion of transaction and within one month after expiration of option given one of defendants to repurchase at higher price, action not barred.

91 U. S 603-617, 23 L. 405, GILMAN v. ILLINOIS ETC. TELEGRAPH CO.

Syl. 4 (VIII, 738). Joinder of ejectment and foreclosure.

Approved in Hatcher v. Hendrie etc. Supply Co., 133 Fed. 271, 68 C. C. A. 19, under Colorado statute remedy on mechanic's lien and on debt may be pursued in single action.

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91 U. S. 618-637, 23 L. 214, DOWS v. NATIONAL EXCHANGE BANK.

Syl. 3 (VIII, 741). Invoice as evidence of title.

Approved in In re Smith & Nixon Piano Co., 149 Fed. 113, construing contract whereby pianos sold to corporation under agreement providing that corporation pay cash for each piano it sold, though invoice recited that shipper sold pianos to corporation as bailment and not sale; In re Wood, 140 Fed. 964, where bankrupt wrote to claimant for articles to be shown at fair and they were billed to him "subject to next spring's terms," and shortly before bankruptcy demand made for goods was refused, claimant could not recover property from trustee; John Deere Plow Co. v. McDavid, 137 Fed. 811, 70 C. C. A. 422, construing contract consigning goods for sale on commission under warranty for safety of goods as one of agency and not conditional sale; In re Miller, 135 Fed. 869, where claimant sold goods to bankrupt who could sell at his discretion, with option to pay price on goods sold or return goods, claimant could not recover unsold goods as against bankruptcy trustee.

Syl. 4 (VIII, 741). Bill of lading—Title on payment of draft.

Approved in Portland etc. Co. v. British etc. Ins. Co., 130 Fed. 864, 65 C. C. A. 334, following rule; Greenwood Grocery Co. v. Canadian etc. Elevator Co., 72 S. C. 453, 110 Am. St. Rep. 629, 52 S. E. 192, 2 L. R. A. (N. S.) 79, buyer has no right to possession of goods by tender of less than amount of draft; General Electric Co. v. Southern Ry., 72 S. C. 254, 110 Am. St. Rep. 603, 51 S. E. 696, where freight shipped under bill of lading with draft attached, and bill of lading was to shipper's order and to notify third party, carrier could not deliver freight to latter without surrender of bill of lading. See 105 Am. St. Rep. 366, 368, note.

Syl. 5 (VIII, 741). Transfer of bill of lading passes title.

Approved in Bush v. Export Storage Co., 136 Fed. 933, where manufacturing corporation leased part of premises to warehouse company and stored its goods in such warehouse, receiving receipts which it pledged, and corporation used up goods and replaced them with others, pledgee took good title; Mather v. Gordon, 77 Conn. 344, 59 Atl. 425, where seller drew draft attached to bill of lading, which was discounted by plaintiff, and on buyer's failure to accept goods or pay draft, plaintiff delivered goods to seller for resale, seller's creditors could not attach goods; Mitchell v. Baker, 208 Pa. 379, 57 Atl. 761, where manufacturer, under seller's direction, ships goods to purchaser, bill of sale being made out in seller's name who indorses it to buyer, title passes to buyer on indorsement of bill of lading and delivery of goods to carrier. See 105 Am. St. Rep. 358, 368, note.

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Syl. 11 (VIII, 743). Rebuttal of presumption as to bill of lading passing title.

Approved in Hamilton v. Schlitz Brewing Co., 129 Iowa, 182, 105 N. W. 442, fact that nonresident seller took bill of lading in name of local agent who indorsed same and it was sent with draft showing delivery not to be made to buyer in this state until payment, does not show as matter of law that sale took place in this state.

91 U. S. 638-642, 23 L. 252, KNOTTS v. STEARNS.

Syl. 2 (VIII, 744). Posthumous child—Equitable conversion.

See 101 Am. St. Rep. 870, note.

91 U. S. 646-656, 23 L. 341, PHILLIPS ETC. CONSTRUCTION CO. v. SEYMOUR.

Syl. 1 (VIII, 745). Special findings when not disturbed on appeal.

Approved in Michigan Home Colony Co. v. Tabor, 141 Fed. 333, disapproving practice of filing large number of assignments of error.

Syl. 7 (VIII, 746). Contract requiring performance on certain day.

Approved in Michigan Home Colony Co. v. Tabor, 141 Fed. 336, where contract for sale of land required payment of balance of purchase money on specified day and that on such payment vendor should on demand thereafter execute deed, vendor could not sue for purchase price without tendering deed; Holliday v. Wright, 134 Mich. 611, 96 N. W. 950, where stock subscriber tenders bank stock and demands repayment pursuant to agreement with promoter, it is no defense to action for money paid that he has not paid for stock as assessments were made, as per contract, where corporation accepted payment after delay; Powers v. Rude, 14 Okl. 395, 79 Pac. 94, applying rule to sale of land.

Syl. 8 (VIII, 746). Waiver of nonperformance on fixed day.

Approved in Wing & Bostwick Co. v. United States Fidelity & G. Co., 150 Fed. 677, where building contract does not specify penalty for noncompletion within time limit, and time not of essence of contract, damages for failure to complete in time is rental value.

91 U. S. 656-667, 23 L. 336, NEW LAMP ETC. CO. v. ANSONIA BRASS ETC. CO.

Syl. 8 (VIII, 749). Collateral attack on bankruptcy decree.

Approved in Silvey v. Tift, 123 Ga. 808, 51 S. E. 750, 1 L. R. A. (N. S.) 386, where petition for involuntary bankruptcy set out preferential transfer to certain firm, adjudication is conclusive of status of bankrupt as such.

Syl. 14 (VIII, 749). Statutory construction—Repugnancy avoided.

Approved in In re United Button Co., 140 Fed. 506, claim for unliquidated damages resulting from injury to property of another, not reduced to judgment, cannot be liquidated under Bankr. Act 1898, § 63b.

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91 U. S. 667-690, 23 L. 290, 458, FLORIDA v. ANDERSON.

Syl. 7 (VIII, 751). Florida improvement act—Option of trustees.

Approved in Wilson v. Mitchell, 43 Fla. 119, 121, 30 So. 706, 707, under Internal Improvement Act, § 3, where trustees exercised discretion to purchase and cancel bonds interest ceased to run thereon unless interest coupons previously canceled and negotiated.

91 U. S. 692-703, 23 L. 379, THE COLORADO.

Syl. 11 (VIII, 753). Collision—Duty to slacken speed in dark.

Approved in Quinette v. Bisso, 136 Fed. 831, 69 C. C. A. 825, holding tug ascending Mississippi above New Orleans in fog at speed of nine miles liable for running down person crossing in skiff.

Syl. 12 (VIII, 754). Collision—What is excessive speed.

Approved in In re Clyde S. S. Co., 134 Fed. 97, six knots is excessive speed for steamer in thick fog in frequented part of ocean.

91 U. S. 704-712, 23 L. 421, WARREN v. SHOOK.

Syl. 3 (VIII, 754). Broker defined.

Approved in Gemundt v. Shipley, 98 Md. 662, 57 Atl. 13, where nonresident owned property in county which he managed and collected rents from and also from property held as cotenant, receiving commission from cotenant, he cannot be sued in such county under Code, art. 75, § 132, authorizing suit in county where business carried on.

91 U. S. 716-730, 23 L. 454, NICHOLS v. EATON.

Syl. 3 (VIII, 755). Bankruptcy trustees to give beneficiary forfeited interest.

Approved in In re McKay, 143 Fed. 673, where will bequeathed directed trustee to pay interest of certain fund to wife and son as designated in will, title to fund vested in trustee and did not pass to bankruptcy trustee of wife and son.

Syl. 5 (VIII, 756). Life estate—Right to rents.

Distinguished in Sprinkle v. Leslie, 36 Tex. Civ. 357, 81 S. W. 1018, where will gave devisee right to rent property but prohibited sale of mortgage thereof, and provided for vesting of title in her heirs after her death, restriction against alienation is void, though devisee took only life estate.

Syl. 6 (VIII, 756). Wills—Debts of grantee.

Approved in Mason v. Rhode Island etc. Trust Co., 78 Conn. 85, 61 Atl. 58, construing will as creating valid spendthrift trust; Kessner v. Phillips, 189 Mo. 524, 107 Am. St. Rep. 368, 88 S. W. 68, where deed conveyed title on condition that land be not liable for grantee's debts contracted during specified term and that grantee could not sell or encumber for certain period except to will same, spendthrift trust not created.

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(VIII, 755.) Miscellaneous. Cited in Woodbury v. Sparrel Print, 187 Mass. 429, 73 N. E. 548, under Rev. Laws, c. 159, § 3, cl. 8, authorizing suit to reach, in payment of debt, property fraudulently conveyed, "debt" includes contract obligations for which amount due not definitely ascertained.

XCII UNITED STATES.

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92 U. S. 1-10, 23 L. 521, BLEASE v. GARLINGTON.

Syl. 2 (VIII, 759). Equity—Examiner cannot decide objections.

Approved in Nelson v. United States, 201 U. S. 114, 50 L. 685, 26 Sup. Ct. 358, immateriality of evidence sought to be elicited before special examiner does not justify refusal to answer; Dowagiac Mfg. Co. v. Lochren, 143 Fed. 216, following rule; Cassett v. Mitchell Coal & Coke Co., 150 Fed. 37, order in action against railroad for violation of interstate commerce act, requiring certain railroad officials to produce certain papers at trial, is final decision reviewable on error; Bank of Ravenswood v. Johnson, 143 Fed. 465, and In re Romine, 138 Fed. 839, both holding referee in bankruptcy in taking testimony must allow question to be answered though it is improper, and note question, objection and ruling in record; Butte etc. Min. Co. v. Montana Ore Purch. Co., 139 Fed. 843, 845, applying rule on taking depositions in action at law; Perry v. Rubber Tire Wheel Co., 138 Fed. 837, applying rule where depositions taken under Rev. St., § 863.

Syl. 4 (VIII, 759). Equity—Testimony must be reduced to writing.

Approved in New England Phon. Co. v. National Phon. Co., 148 Fed. 324, witness whose testimony is being taken orally before examiner cannot refuse to answer question on ground that questions are immaterial; Bank of Ravenswood v. Johnson, 143 Fed. 466, and In re Romine, 138 Fed. 841, both holding where objections to evidence before referee sustained, referee at request of party offering same need not certify objections to court.

Syl. 5 (VIII, 759). Equity—Ruled out testimony must be in record.

Approved in Dowagiac Mfg. Co. v. Lochren, 143 Fed. 213, 214, 215, following rule; United Cigarette etc. Co. v. Wright, 132 Fed. 198, applying rule to equity pleading.

Distinguished in Lacroix v. Tyberg, 149 Fed. 782, on taking depositions to be used in contest before Patent Office, witness required to answer questions where testimony may, on one theory of case, be relevant; Independent B. P. Co. v. Boorman, 137 Fed. 996, where part of answer in equity setting up particular defense has been stricken out on ground of irrelevancy, court of another district in which testi-

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mony is being taken before examiner will, on objections, exclude testimony in support of such defense.

Syl. 7 (VIII, 760). Sales—Means of knowledge open to both.

Approved in Kimber v. Young, 137 Fed. 749, 70 C. C. A. 178, in action for deceit in sale of corporation bonds, falsity of representations that defendant knew bonds were good and that they would be paid at maturity does not create liability.

92 U. S. 10-26, 23 L. 524, GAINES v. FUENTES.

Syl. 2 (VIII, 760). Federal jurisdiction—Diverse citizenship.

Approved in Peyton v. Desmond, 129 Fed. 5, 63 C. C. A. 651, upholding jurisdiction over action for damages for conversion of timber wrongfully cut from plaintiff's land.

Syl. 3 (VIII, 760). Circuit court's jurisdiction on removal.

Distinguished in Cochran v. Montgomery County, 199 U. S. 269, 50 L. 187, 26 Sup. Ct. 58, holding decision of circuit court of appeals final where suit removed for local prejudice.

Syl. 5 (VIII, 761). Equity jurisdiction to set aside probate.

Approved in Medill v. Snyder, 71 Kan. 597, 81 Pac. 219, time limited by statute of wills for bringing action in district court is not extended by Code Civ. Proc., § 23.

Syl. 6 (VIII, 761). Federal equity jurisdiction to set aside probate.

Distinguished in O'Callaghan v. O'Brien, 199 U. S. 104, 109, 50 L. 109, 110, 25 Sup. Ct. 727, diverse citizenship does not give federal jurisdiction of bill to declare nonexistence of will and nullity of its state probate, where under state law will contest is ancillary to original probate proceedings.

Syl. 7 (VIII, 762). Removal—Controversy between diverse citizens.

Approved in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 248, 49 L. 466, 25 Sup. Ct. 251, proceeding in eminent domain under Ky. Stat., §§ 835-839, where requisite diversity of citizenship exists, is removable; Johnson v. Computing Scale Co., 139 Fed. 344, where amount claimed in complaint in state court is sufficient to give federal jurisdiction, plaintiff cannot defeat jurisdiction after removal by affidavit showing he is entitled to less than jurisdictional amount; Buckhannon etc. R. Co. v. Davis, 135 Fed. 709, 68 C. C. A. 345, order requiring that suit against federal receiver to condemn crossing over right of way should be brought in federal court does not interfere with state's right of eminent domain; Barber Asphalt etc. Co. v. Morris, 132 Fed. 949, 67 L. R. A. 761, 66 C. C. A. 55, Duluth charter relating to appeals from allowance or rejection of claims, does not restrict federal jurisdiction to enforce judgments on such claims.

92 U. S. 27-31, 23 L. 597, HALL v. UNITED STATES.

(VIII, 765.) Miscellaneous. Cited in United States v. Foreman, 5 Okl. 253, 48 Pac. 97, one suing government in territorial court to

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recover money paid for land on which entry erroneously allowed and afterward canceled need not show surrender of duplicate receipt and relinquishment of claims to land.

92 U. S. 41-49, 23 L. 646, ROBERTS v. UNITED STATES.

Syl. 1 (VIII, 706). Compensation for services rendered at official's request.

Approved in Slavens v. United States, 196 U. S. 238, 49 L. 461, 25 Sup. Ct. 229, mail contractor not entitled to extra compensation for services outside terms of contract performed on unauthorized demand of postmaster, where on Postmaster General's protest he was relieved from such services.

92 U. S. 73-77, 23 L. 697, SHUEY v. UNITED STATES.

Syl. 3 (VIII, 768). Reward for arrest and for information leading to arrest.

Approved in McClaughry v. King, 147 Fed. 465, affirming 135 Fed. 196, reward for arrest of each of parties convicted of certain crime, is not earned by merely giving information which leads to arrest; Smith v. Vernon County, 188 Mo. 506, 107 Am. St. Rep. 324, 87 S. W. 950, 70 L. R. A. 59, where reward offered for "apprehension and conviction," one apprehending felon and turning him over to officer who testified at trial from which conviction resulted earned reward; Ralls County v. Stephens, 104 Mo. App. 119, 78 S. W. 292, where one knowing of crime and of reward for apprehension, arrest and conviction, located suspect and telegraphed sheriff to arrest him, which was done, and he was turned over to informant who elicited confession, informant entitled to reward as against sheriff; dissenting opinion in McClaughry v. King, 147 Fed. 469, majority holding reward for arrest of each of parties convicted of certain crime, not earned by merely giving information as to whereabouts of suspect.

92 U. S. 85-90, 23 L. 561, CHEATHAM v. UNITED STATES.

Syl. 2 (VIII, 769). Recovery of taxes paid not of right.

Approved in Christie Street Com. Co. v. United States, 129 Fed. 508, where petition for recovery of taxes paid under duress shows that plaintiff had appealed to Internal Revenue Commissioner for redress, action is subject to limitations imposed by Rev. St., §§ 3226, 3227.

Syl. 3 (VIII, 770). Courts cannot control tax collection.

Approved in Christie Street Com. Co. v. United States, 129 Fed. 508, denying circuit court's jurisdiction under Comp. St. 1901, p. 752, over action to recover tax exacted under duress; McConnel v. Hampton, 164 Ind. 549, 73 N. E. 1092, refusing to enjoin assessor from placing on tax duplicate assessments for property omitted in past years where assessor had initiated proceedings therefor.

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92 U. S. 90-93, 23 L. 678, WALKER v. SAUVINET.

Syl. 2 (VIII, 770). Jury trial not privilege of citizenship.

Approved in Tilley v. Cox, 119 Ga. 870, 47 S. E. 221, upholding Civ. Code, 1895, § 5331, authorizing court to direct jury where there is no conflict in evidence; Light v. Canadian County Bank, 2 Okl. 550, 37 Pac. 1077, upholding statutory proceedings for arrest and bail of debtors; Gunn v. Union R. R. Co., 27 R. I. 322, 62 Atl. 119, upholding Gen. Laws 1896, c. 251, § 11, authorizing supreme court to direct judgment without further trial by jury.

Syl. 3 (VIII, 771). When due process complied with.

Approved in St. Louis v. Galt, 179 Mo. 17, 77 S. W. 879, 63 L. R. A. 778, upholding ordinance prohibiting one from permitting growth of weeds on his premises.

Syl. 4 (VIII, 771). What is due process of law in states.

Approved in In re Francis, 136 Fed. 913, under Bankr. Act 1898, § 2, subd. 3, where it is alleged that debt for which bankrupts liable created by fraud, that two had absconded and other in jail, appointment of receiver before adjudication without notice to incarcerated bankrupt, is due process; Wenham v, State, 65 Neb. 402, 91 N. W. 423, 58 L. R. A. 825, upholding act of 1889, regulating hours of labor of females employed in certain lines of work.

92 U. S. 93-101, 23 L. 699, MAGEE v. MANHATTAN LIFE INS. CO.

Syl. 1 (VIII, 772). Fraud vitiates surety's contract.

Approved in Orleans etc. Ry. Co. v. International Const. Co., 113 La. 413, 37 So. 11, surety released by change in contract with reference to work.

Syl. 2 (VIII, 773). Surety's defense after loss—Facts within knowledge.

Approved in American Bonding Co. v. Pueblo Inv. Co., 150 Fed. 23, surrender of premises by lessee during term does not relieve surety from liability for matured obligations; Reed v. Munn, 148 Fed. 761, refusing to enforce, for laches, trust with reference to mining claims.

Syl. 3 (VIII, 773). Principal and surety—Disclosures required.

Approved in Watertown Savings Bank v. Mattoon, 78 Conn. 394, 62 Atl. 624, where sureties on bank official's bond did not sign at request of directors, fact that directors knew of prior embezzlement of which they did not inform sureties, does not release them; Sherman v. Harbin, 125 Iowa, 181, 100 N. W. 631, where mutual life association not asked by surety as to president's past conduct, association not guilty of fraudulent concealment avoiding bond; Wright v. German Brewing Co., 103 Md. 380, 63 Atl. 808, fraudulent concealment of fact that principal while in employ of obligee had committed forgery, is no defense to action on bond.

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92 U. S. 101-105, 23 L. 471, NEBLETT v. MACFARLAND.

Syl. 2 (VIII, 774). Depreciation of property fraudulently conveyed.

Approved in Green-Duvergey, 146 Cal. 389, 390, 80 Pac. 238, 239, where one from whom conveyance obtained by fraud gave notice of rescission immediately on discovery of fraud and tendered back certificate of deposit he had received as consideration, he was entitled to rescission on tendering back amount of certificate.

92 U. S. 107-111, 23 L. 486, STOTT v. RUTHERFORD.

Syl. 1 (VIII, 774). Lease—"Grant" and "devise" construed.

Approved in Shenk v. Stahl, 35 Ind. App. 497, 74 N. E. 540, words "granted and leased" in contract relating to land for gas wells, being merely covenant for quiet enjoyment, contract is lease.

92 U. S. 116-121, 23 L. 488, KITTREDGE v. RACE.

Syl. 3 (VIII, 775). Pendency of equity suit—Abatement of law action.

Approved in Cheshire Prov. Inst. v. Anglo-American etc. Co., 132 Fed. 969, 66 C. C. A. 122, judicial proceedings by bank commissioners under state law to wind up bank in which assignee is appointed, do not dissolve corporation so as to preclude federal judgment against bank; Thiel Detective etc. Co. v. McClure, 130 Fed. 57, where at time creditor of decedent filed federal bill for accounting by executor, state suit for similar purpose had been filed, to which complainant not made party, federal bill not maintainable.

Syl. 4 (VIII, 775). Costs in equity.

Approved in Western Coal etc. Co. v. Petty, 132 Fed. 604, where federal suit against two defendants as joint trespassers was dismissed as to one for want of jurisdiction, and plaintiff sued him in state court, securing judgment, which was paid, and defendant in federal court secured dismissal on filing amended answer setting up such payment, such defendant entitled to costs; Consolidated etc. Min. Co. v. Baker, 131 Fed. 991, plaintiff in ejectment for mining property and also in equity to enjoin trespass by same defendant, recovering in both cases, entitled to costs in both, though it only recovered as to part of ground.

Distinguished in Nutter v. Brown, 58 W. Va. 240, 52 S. E. 90, 1 L. R. A. (N. S.) 1083, decree in equity respecting allowances of expenses and compensation of receiver appealable.

92 U. S. 122-129, 23 L. 679, FIRST NAT. BANK v. NATIONAL EXCHANGE BANK.

Syl. 1 (VIII, 776). Implied powers of national banks.

See 111 Am. St. Rep. 318, note.

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Syl. 4 (VIII, 777). National bank cannot deal in stocks.

Approved in First Nat. Bank v. Converse, 200 U. S. 439, 50 L. 542, 26 Sup. Ct. 306, national bank cannot take in exchange for debt against insolvent corporation, stock in corporation organized to buy and sell assets of insolvent corporation.

Syl. 3 (VIII, 777). National bank's compromise by taking stock.

Approved in Westminster Bank v. New England etc. Works, 73 N. H. 476, 111 Am. St. Rep. 640, 62 Atl. 974, following rule; Morris v. Third Nat. Bank, 142 Fed. 32, national bank which has become owner of notes secured by mortgage may agree with holders of conflicting mortgages to represent all in action to enforce security, respective rights in property to be determined later; Fidelity Ins. Co. v. German Sav. Bank, 127 Iowa, 598, 103 N. W. 960, insurance company may accept stock in bank as reorganized, in payment of part of deposit in insolvent bank, though acquisition of stock outside of scope of business; Hill v. Shilling, 69 Neb. 157, 95 N. W. 25, applying rule to savings bank; dissenting opinion in First Nat. Bank v. Converse, 200 U. S. 441, 50 L. 543, 26 Sup. Ct. 306, majority holding national bank cannot take in exchange for debt of insolvent corporation, stock in corporation organized to buy and sell assets of insolvent corporation.

Distinguished in Merchants' Nat. Bank v. Wehrmann, 202 U. S. 300, 50 L. 1040, 26 Sup. Ct. 613, national bank cannot become absolute owner, in satisfaction of debt, of shares represented by transferable certificates in land partnership.

92 U. S. 142-156, 23 L. 701, MARKEY v. LANGLEY.

Syl. 2 (VIII, 779). Power requiring cash sale—Departure beneficial.

Approved in Green Real Estate Co. v. St. Louis Mut. House Bldg. Co., 196 Mo. 372, 93 S. W. 1115, fact that purchaser at sale by trustee in deed of trust did not pay all of money for several days did not make it sale on credit, in violation of deed requiring sale for cash;

Syl. 5 (VIII, 779). Liens attach to proceeds of sale of property.

Approved in Hagerstown v. Groh, 101 Md. 564, 61 Atl. 469, mortgagee who is satisfied with award made in condemnation proceedings affecting property may file bill in equity to establish his claim against fund awarded as damages.

92 U. S. 156-161, 23 L. 537, TERRY v. TUBMAN.

Syl. 3 (VIII, 780). Stockholder's liability enforceable in equity.

Distinguished in Miller v. Smith, 26 R. I. 150, 58 Atl. 635, 66 L. R. A. 473, equity suit by creditors of Colorado corporation on behalf of themselves and others who may come in, to enforce stockholder's double liability under 1 Mills Ann. St. Colo. § 533, not maintainable.

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Syl. 4 (VIII, 781). Limitations against bank stockholder's liability.

Approved in Bennett v. Thorne, 36 Wash. 265, 78 Pac. 940, 68 L. R. A. 113, action against bank stockholders for additional liability accrues on insolvency of bank and must be enforced within six years.

92 U. S. 171-175, 23 L. 469, CAREY v. BROWN.

Syl. 1 (VIII, 782). Cestui—Necessary party—Trustee's suit.

Approved in Woodward v. Davidson, 150 Fed. 844, where railroad appointed trustee to acquire realty for it, and he, through broker, obtained contract for purchase of land running to other brokers, and contract assigned to him, he could sue in his own name for specific performance to use of railroad; In re E. T. Kenney Co., 136 Fed. 455, where creditors of bankrupt, before bankruptcy, assigned claims to committee in trust to purchase property and sell same for benefit of assignees, latter could not prove equitable interest as claims against bankrupt estate; Virginia etc. Power Co. v. Fisher, 104 Va. 133, 136, 51 S. E. 202, 203, bondholder cannot sue to foreclose mortgage unless trustee has been requested and neglected so to do, or cannot act.

92 U. S. 176-179, 23 L. 480, BAKER v. WHITE.

Syl. 1 (VIII, 786). Final judgment—Reversal and ordering new trial.

Approved in Clement v. Wilson, 135 Fed. 750, 68 C. C. A. 387, following rule.

92 U. S. 179-183, 23 L. 542, BURBANK v. BIGELOW.

Syl. 1 (VIII, 783). Bankruptcy—Jurisdiction of circuit court.

Approved in In re Owings, 140 Fed. 741, bankruptcy court cannot allow bankrupt domiciled in district homestead in lands situated in another district; In re Benedict, 140 Fed. 59, bankruptcy court, may, where receiver appointed in another district, appoint ancillary receiver to preserve property in its district.

92 U. S. 183-186, 23 L. 481, SMITH v. VOGES.

Syl. 1 (VIII, 784). Fraudulent conveyance by husband to wife.

Approved in Aldous v. Olverson, 17 S. D. 200, 95 N. W. 920, conveyance by husband to wife, duly recorded and not made with intent to defraud subsequent creditors, cannot be attacked by them, though it is in fraud of existing creditors.

92 U. S. 214-256, 23 L. 563, UNITED STATES v. REESE.

Syl. 4 (VIII, 789). Discrimination prohibited by fifteenth amendment.

Approved in Porter v. Commissioners Kingfisher Co., 6 Okl. 556, 51 Pac. 743, holding void act of 1897, providing for election of separate school boards for whites and negroes within each school district; Pope v. Williams, 98 Md. 71, 103 Am. St. Rep. 379, 56 Atl. 545, 66 L. R. A.

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398, upholding act of 1902, providing that no one coming from another state can register as voter until one year after declaration of intent to become voter.

Syl. 2 (VIII, 788). Immunities, how protected.

Approved in Kentucky v. Powers, 201 U. S. 27, 50 L. 645, 26 Sup. Ct. 387, denial, in summoning or impaneling jurors, of equal rights secured by federal law to accused, give right of removal; Ex parte Riggins, 134 Fed. 422, refusing to discharge on habeas corpus one indicted for conspiracy under Rev. St., §§ 5508, 5509, in lynching negro accused of crime to prevent his enjoyment of constitutional rights; Smiley v. Kansas, 196 U. S. 455, 49 L. 550, 25 Sup. Ct. 289, arguendo.

Syl. 3 (VIII, 788). Fifteenth amendment confers no right of suffrage.

Approved in State v. Weber, 96 Minn. 430, 105 N. W. 493, upholding constitutional provision limiting suffrage, as respects naturalized citizens, to such as are admitted three months prior to election.

Syl. 6 (VIII, 789). Penal act partly void, void in toto.

Approved in United States v. Ju Toy, 198 U. S. 262, 49 L. 1044, 25 Sup. Ct. 644, upholding Comp. St. 1901, p. 1303, making decision of appropriate department on right of Chinese to enter conclusion on federal courts in habeas corpus; Brooks v. Southern Pac. Co., 148 Fed. 994, and Howard v. Illinois C. R. Co., 148 Fed. 1004, both holding void federal employees' liability act of 1906; Cella Com. Co. v. Bohlinger, 147 Fed. 423, 425, holding void Ark. act of 1901, authorizing personal judgment against foreign corporation on cause of action in favor of resident on service of summons on state auditor, as to corporations doing business in state; McDonald v. Southern Exp. Co., 134 Fed. 289, holding void S. C. act of 1904, prohibiting shipment of shad beyond limits of state; State v. Cudahy Packing Co., 33 Mont, 187, 190, 191, 82 Pac. 835, 836, 837, holding void Pen. Code, § 321, prohibiting combinations to fix prices, and Pen. Code, § 325, exempting persons engaged in agriculture or horticulture.

92 U. S. 259-275, 23 L. 543, HENDERSON v. MAYOR OF NEW YORK.

Syl. 1 (VIII, 791). Effect determines constitutionality of statute.

Approved in Ex parte Bakley, 148 Fed. 62, parents of minor under eighteen who has enlisted in navy without their consent are entitled to his discharge on habeas corpus; Myers v. United States, 140 Fed. 650, action of Quebec in imposing license fee for cutting wood on public lands which is reduced when wood is made into pulp in Canada, is imposition of export duty within Tariff Act 1897, c. 11, § 1, sched. M, par. 393, providing for countervailing duty; dissenting opinion in Pabst Brewing Co. v. Crenshaw, 198 U. S. 39, 49 L. 934, 25 Sup. Ct. 552, majority upholding Missouri state imposing inspection fee on malt

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liquors shipped from other states and held there for sale and consumption.

Syl. 2 (VIII, 792). Immigrant por capita tax on shipowners.

Distinguished in Harrell v. Speed, 113 Tenn. 229, 106 Am. St. Rep. 814, 81 S. W. 841, one running bar on boat plying between Arkansas and Tennessee is subject to tax inposed by Tennessee statute for running bar while vessel is at Tennessee landing.

Syl. 4 (VIII, 793). Police power—Regulation of interstate commerce.

Approved in Northern Securities Co. v. United States, 193 U. S. 336, 48 L. 700, 24 Sup. Ct. 436, combination by stockholders in two competing interstate railways to form stockholding corporation which should require, in exchange for its own stock, controlling interest in each railroad, violates anti-trust act of 1890; McDonald v. Southern Exp. Co., 134 Fed. 288, holding void S. C. act of 1904, prohibiting shipment of shad beyond limits of state; Hall v. Chicago etc. Ry. Co., 149 Fed. 566, arguendo.

Syl. 6 (VIII, 795). Immigrant laws exclusively for Congress.

Approved in Globe Elevator Co. v. Andrew, 144 Fed. 883, holding void Laws Wis. 1905, p. 37, c. 19, providing for inspection, grading and weighing of grain at Superior, and prohibiting sales under Minnesota grades.

92 U. S. 275-281, CHY LUNG v. FREEMAN.

Syl. 4 (VIII, 796). Commerce—Requiring immigrant bond of shipowners.

Approved in McDonald v. Southern Exp. Co., 134 Fed. 288, holding void S. C. act of 1904, prohibiting shipment of shad beyond limits of state.

92 U. S. 281-285, 23 L. 707, UNITED STATES v. ROSS.

Syl. 2 (VIII, 798). Circumstantial evidence must prove circumstances.

Approved in Vernon v. United States, 146 Fed. 125, 126, holding evidence, in prosecution for bribery under Rev. St., § 5451, insufficient to warrant finding that defendant made promise or gave money to officer to affect official action, or to prove offense committed in district; United States etc. Guaranty Co. v. Des Moines Nat. Bank, 145 Fed. 279, presumption of innocence of others having access to cash is not sufficient to raise inference that principal on surety bond was negligent or dishonest; State v. Kelly, 77 Conn. 271, 58 Atl. 707, where defendant accused of poisoning wife claimed suicide, evidence that she at times was despondent and said she had stomach trouble and no desire to live, is inadmissible; Young v. Montgomery, 161 Ind. 70, 67 N. E. 685, upholding instruction in will contest withdrawing issue as to undue influence; Western Travelers' Acc. Assn. v. Holbrook, 65 Neb.

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472, 91 N. W. 277, where circumstantial evidence showed that person has been injured by falling from dangerous height, it is presumed that fall was accidental; East Tennessee etc. R. R. Co. v. Lindamood, 111 Tenn. 473 474, 78 S. W. 103, where there is no evidence of nature of defect in brake which caused it to lurch forward while being set, thereby injuring brakeman, expert evidence that certain enumerated defects would cause such lurch is inadmissible; Gulf etc. Ry. v. Matthews, 32 Tex. Civ. 145, 73 S. W. 418, holding evidence in action against railroad for death of one run over by train showed deceased, when struck, was lying on track and not walking.

Distinguished in Bryan v. United States, 133 Fed. 501, 66 C. C. A. 369, where indictment charged in one count, passing of counterfeit 5-cent pieces, and in other possession of molds for counterfeiting 25-cent pieces, dismissal of latter does not necessitate exclusion of evidence of finding 25-cent molds in possession of defendant.

Syl. 3 (VIII, 799). Presumption that officers perform duties.

Approved in Davis v. Moyles, 76 Vt. 36, 56 Atl. 177, petition to legislature for grant of lands reciting confiscation of lands by state, and acts granting land also reciting confiscation, not evidence of confiscation.

92 U. S. 286-288, 23 L. 709, NEW YORK LIFE INS. CO. v. HENDREN.

Syl. 1 (VIII, 800). Federal question—State decision on general law.

See 97 Am. St. Rep. 720, note.

92 U. S. 289-299, 23 L. 910, TOWNSHIP OF ELMWOOD v. MARCY.

Syl. 2 (VIII, 800). Following state statutory construction.

Approved in City of Sioux Falls v. Farmers' Loan etc. Co., 136 Fed. 730, 69 C. C. A. 373, where in suit to restrain city from constructing waterworks, complainant's rights were acquired under city contract, federal courts follow state court construction of state laws with reference to city's power to increase debt to construct waterworks.

92 U. S. 307-315, 23 L. 552, COMMISSIONERS OF LARAMIE CO. v. ALBANY CO.

Syl. 1 (VIII, 802). What are municipal corporations.

Approved in Lincoln Co. v. Brock, 37 Wash. 17, 79 Pac. 478, county is municipal corporation within constitutional provision prohibiting appropriation of right of way for use of corporations other than municipal until full compensation made; dissenting opinion in Allen v. Reed, 10 Okl. 134, 149, 63 Pac. 870, 875, majority holding void St. 1893, c. 23, relating to change of county seats.

Syl. 3 (VIII, 803). Alteration of municipal charters.

Approved in Attorney General v. Lowrey, 199 U. S. 239, 50 L. 170, 26 Sup. Ct. 27, upholding Mich. Laws 1901, No. 315, relating to school districts; Worcester v. Worcester etc. St. Ry. Co., 196 U. S. 549, 49 L. 595, 25 Sup. Ct. 327, upholding Mass. Laws 1898, c. 578, abrogating

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provisions of contract between street railway and city with reference to paving of streets through which company has franchise.

Syl. 4 (VIII, 803). Municipal corporations are public corporations.

Approved in Saginaw County Suprs. v. Hubinger, 137 Mich. 76, 100 N. W. 263, upholding Loc. Acts 1901, p. 114, No. 335, providing for county road system in certain county and impliedly repealing act of 1895, providing for township road systems.

Syl. 5 (VIII, 803). Division of municipality—Debts of old.

Approved in Planters' etc. Bank v. Huiett Tp., 132 Fed. 628, fact that after township issued bonds it was transferred to new county does not affect liability of its people or property for payment of bonds; Taylor v. Pine Grove Township, 132 Fed. 567, where after issue of township bonds, boundaries changed so as to include new territory, all territory and property therein is liable for payment of bonds; Shoshone County v. Thompson, 11 Idaho, 143, 81 Pac. 76, under § 5 of Act of 1903, annexing part of Shoshone county to Nez Perce county, tax sale certificates and tax deeds and delinquent taxes belong to Shoshone county; Little Rock v. North Little Rock, 72 Ark. 202, 79 S. W. 787, arguendo.

92 U. S. 315-320, 23 L. 515, REPUBLICAN RIVER BRIDGE CO. v. KANSAS ETC. RY. CO.

Syl. 2 (VIII, 805). Review of evidence in state court's record.

Approved in Clipper Min. Co. v. Eli Min. etc. Co., 194 U. S. 222, 48 L. 948, 24 Sup. Ct. 632, applying rule to validity of placer mining claim.

92 U. S. 327-330, 23 L. 511, BROWN v. ATWELL.

Syl. 1 (VIII, 807). Record must show federal question decided.

Approved in Mathew v. Wabash Ry. Co., 115 Mo. App. 481, 81 S. W. 648, error to federal supreme court lies in action for injuries to passenger on interstate railroad where defendant alleged it had equipped engines and cars with automatic couplers and wheel brakes required by interstate commission and that such equipment increased hazard.

92 U. S. 330-342, 23 L. 556, ANGLE v. NORTHWESTERN MUT. LIFE INS. CO.

Syl. 2 (VIII, 808). Notes—Implied authority to fill blanks.

Approved in Theard v. Gueringer, 115 La. 247, 38 So. 981, where owner and payee of note for $2,600, indorsed by her in blank, left it with notary who sold it for $2,000, and mortgage security sold by owner, purchaser depositing amount of note in court, purchaser of note limited to $2,000 of fund; Smith v. Willing, 123 Wis. 382, 101 N. W. 694, where note on printed form had name of payee blank, not negotiable though it contained provision for confession of judgment in favor of holder.

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Syl. 3 (VIII, 809). Alteration of instruments avoids them.

Approved in Hecht v. Shenners, 126 Wis. 30, 105 N. W. 310, Laws 1899, p. 681, c. 356, declaring materially altered note valid in hands of holder in due course not connected with alteration, does not apply to altered note transferred before act took effect.

92 U. S. 347-358, 23 L. 719, RECHENDORFER v. FABER.

Syl. 1 (VIII, 811). Conclusiveness of allowance of patent shows.

Approved in Los Angeles Art Organ Co. v. Aeolian Co., 143 Fed. 884, holding Tremaine & Pain patent No. 552,796, for improvements in mechanical musical instruments, infringed by Fleming patent No. 659,442.

Syl. 2 (VIII, 811). Patentability of combination.

Approved in Thomas v. St. Louis etc. R. Co., 149 Fed. 755, holding void Thomas patent No. 570,148, for car truss; American Choc. Mach. Co. v. Helmstetter, 142 Fed. 980, holding Holmes' patent No. 592,205, for chocolate dipping machine, not infringed by machine of Weeks patent No. 634,633; Johnson v. Foos Mfg. Co., 141 Fed. 87, holding void Johnson patent No. 654,550, for improvements in machine for separating cotton-seed and hulls from fiber; Brown Bag Filling Mach. Co. v. Drohen, 140 Fed. 101, upholding Cummings patent No. 573,171, for paper-bag filling machine; Dodge Coal Storage Co. v. New York etc. R. R. Co., 139 Fed. 986, 987, holding void Piez & Beaumont patents Nos. 668,960, and 688,111, for improvements in cold-storage apparatus; West Boylston Mfg. Co. v. Wallace, 137 Fed. 927, 928, holding void Mitchelsen patent No. 718,499, for tenting cloth.

Distinguished in Thomson-Houston El. Co. v. Ohio Brass Co., 129 Fed. 379, upholding Van Depoele patent No. 394,039, for insulated turnbuckle.

92 U. S. 362-371, 23 L. 483, SCAMMON v. KIMBALL.

Syl. 2 (VIII, 813). Offset against stockholder's liability.

Approved in In re Shults, 132 Fed. 575, solvent partnership which is indebted to bankrupt cannot set off against such debt claim due from bankrupt estate to one of partners.

Distinguished in Smith v. Perry, 197 Mo. 452, 459, 95 S. W. 340, 343, where estate of cestui que trust was insolvent, trustee's estate in action for accounting, may set off claims held by trustee individually against cestui que trust.

Syl. 5 (VIII, 813). Relation between bank and depositor.

Approved in Burton v. United States, 196 U. S. 302, 49 L. 488, 25 Sup. Ct. 243, indictment charging receipt of check at St. Louis and alleging payment thereof to him there not supported by proof of receipt in Washington of St. Louis check deposited in Washington bank and immediately credited to defendant.

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Syl. 6 (VIII, 814). Banker's setoff against insurance policy.

Approved in Brown v. Pegram, 149 Fed. 520, judgment debtor may enjoin collection of judgment on allegation of setoffs against beneficial owners, though setoffs are unliquidated legal demands; Tomlinson v. Bank of Lexington, 145 Fed. 826, where manufacturing company agreed with its bank that subsequent deposits be applied to prior overdrafts, deposits so applied not preferences though company insolvent when deposits made. See 111 Am. St. Rep. 422, note.

Syl. 7 (VIII, 814). Setoff against assignee for creditors.

Approved in Frank v. Mercantile Nat. Bank, 182 N. Y. 267, 108 Am. St. Rep. 805, 74 N. E. 842, notes made by bankrupt but not due at time of bankruptcy may be set off in action in state court by assignee on claim against holder of notes.

92 U. S. 377-382, 23 L. 610, PIEDMONT ETC. LIFE INS. CO. v. EWING.

Syl. 1 (VIII, 815). Burden on insurer to answers untrue.

Approved in Logan v. Provident Sav. Life Assur. Society, 57 W. Va. 391, 50 S. E. 532, following rule.

Distinguished in O'Connor v. Grand Lodge A. O. U. W., 146 Cal. 494, 80 Pac. 692, holding evidence showed that insured's answer in application that he had not been afflicted with rheumatism was willfully false.

Syl. 2 (VIII, 816). Acceptance of offer after new knowledge.

Approved in Thompson v. Travelers' Ins. Co., 13 N. D. 453, 101 N. W. 902, holding insurer not liable where disease from which insured suffered at time first premium paid not known until his death; Whitman v. Milwaukee Fire Ins. Co., 128 Wis. 131, 107 N. W. 293, 5 L. R. A. (N. S.) 407, arguendo.

92 U. S. 382-390, 23 L. 660, SAVAGE v. UNITED STATES.

Syl. 1 (VIII, 816). Waiver of gold by acceptance of treasury notes.

Approved in San Juan v. St. John's Gas Co., 195 U. S. 521, 49 L. 305, 25 Sup. Ct. 108, agreement that payment in United States currency should extinguish larger amount due under lighting contract estimated in Porto Rican money is binding where there was dispute as to medium of payment.

92 U. S. 412-417, 23 L. 684, BUTLER v. THOMSON.

Syl. 1 (VIII, 818). Statute of frauds—Broker's memorandum of sale.

Approved in Gardiner v. McDonogh, 147 Cal. 320, 81 Pac. 966, where contract of sale recited purchase of "500 sax Bayo at $3.50 per 100," parol evidence admissible to show "Bayo" meant Bayou beans, and "per 100" meant per hundred pounds; Reid v. Alaska Packing Co., 43 Or. 438, 73 Pac. 340, contract for sale of goods exceeding $50 in value, memoranda of which executed by broker are delivered to each party, contract also being entered on broker's books, is not within statute of frauds.

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92 U. S. 426-432, 23 L. 494, IVES v. HAMILTON.

Syl. 1 (VIII, 819). Issues in action for infringement of patent.

Approved in Edison etc. Elec. Co. v. Crouse etc. Elec. Co., 146 Fed. 547, construing Metzger patent No. 489,682, for electric lamp socket and holding it infringed; Columbia Wire Co. v. Kokomo etc. Co., 143 Fed. 122, holding Bates' patent No. 365,723, for wire-barbing machine valid and infringed by machine of Friederick patent No. 711,303; Benbow etc. Mfg. Co. v. Simpson Mfg. Co., 132 Fed. 616, construing Schroeder patent No. 535,465, for means for operating washing-machines and holding it infringed.

Syl. 2 (VIII, 819). Patents—Use of equivalents.

Approved in Universal Brush Co. v. Sonn, 146 Fed. 531, 533, holding Morrison patent No. 717,014, for method of making brushes, infringed by method of Sonn patent No. 791,510; International Mfg. Co. v. H. F. Brammer Mfg. Co., 138 Fed. 398, construing Plagman patent No. 608,220, for mechanical movement for use in washing-machines and holding it infringed by device of Martin patent No. 736,285; Letson v. Alaska Packers' Assn., 130 Fed. 143, 64 C. C. A. 463, holding Jensen patent No. 376,804, for can-capping machine infringed by Letson & Burpee patent machine.

92 U. S. 432-438, 23 L. 724, THE AMERICA.

Syl. 5 (VIII, 820). Collision—Damages and costs both at fault.

Approved in The City of Birmingham, 138 Fed. 560, reversing with costs in appellate court; The Steam Dredge No. 1, 134 Fed. 167, 69 L. R. A. 292, 67 C. C. A. 67, dividing damages where government inspector negligently placing himself in light of hawser injured by breaking of bitt through negligence of dredge employee.

92 U. S. 447-449, 23 L. 496, OTIS v. CULLUM.

Syl. 1 (VIII, 821). Liability of vendors of void municipal bonds.

Approved in Hinkley v. Champaign Nat. Bank, 216 Ill. 566, 75 N. E. 213, assignment of judgment rendered on confession on power of attorney whereby assignor covenants that there is due on judgment specified sum and that he will not collect or release same, does not make him liable for damages resulting from defendant's opening and defeating judgment.

Distinguished in Union Bank v. Oxford etc. R. Co., 143 Fed. 198, 199, where officer of railroad authorized to sell town aid bonds by directors, during negotiations stated that bonds were good and had been so adjudged by court, but bonds were in fact void, purchaser could recover consideration paid.

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92 U. S. 449-454, 23 L. 730, BARNEY v. WATSON.

Syl. 3 (VIII, 823). Time to protest against illegal duties.

Distinguished in Kahn v. Herold, 147 Fed. 580, where at time executors paid internal revenue inheritance tax on life estate under protest they did not know life tenant had died, payment not voluntary.

92 U. S. 454-456, 23 L. 620, TERRY v. COMMERCIAL BANK.

Syl. 3 (VIII, 823). Insolvent banks—Discharge of stockholders.

Cited in Dickinson v. Saunders, 129 Fed. 20, 63 C. C. A. 666, arguendo.

92 U. S. 467-473, 23 L. 733, TYNG v. GRINNELL.

Syl. 2 (VIII, 824). Extent of review of special findings.

Approved in Anglo-American etc. Co. v. Lombard, 132 Fed. 734, 68 C. C. A. 89, reciting practice on appeal where there is special finding in law action tried to court; Webb v. National Bank of Republic, 146 Fed. 719, arguendo.

92 U. S. 473-479, 23 L. 735, MILLER v. DALE.

Syl. 4 (VIII, 825). Conclusiveness of patent on confirmed grant.

Approved in Catron v. Laughlin, 11 N. M. 633, 72 Pac. 32, where Congress confirmed grant to such of grantees as had not forfeited rights by noncompliance with grant, burden of proving forfeiture is on party alleging it.

92 U. S. 480-483, 23 L. 478, KENNARD v. LOUISIANA.

Syl. 4 (VIII, 826). Due process—Officers—Statute regulating removals.

Approved in Chatham v. Mansfield, 1 Cal. App. 302, 82 Pac. 345, upholding Code Civ. Proc., § 1119, providing that when person whose right to office is contested cannot be found he may be served by leaving copy at house of last residence five days before time specified in notice.

Distinguished in dissenting opinion in Territory v. Albright, 12 N. M. 316, 78 Pac. 211, majority holding assessor appointed pursuant to Laws 1903, p. 80, amending act dividing Bernadillo county on day before latter act went into effect not entitled to office.

92 U. S. 484-494, 23 L. 579, TOWN OF COLMA v. EAVES.

Syl. 1 (VIII, 826). Recitals in municipal bonds.

Approved in Platt v. Hitchcock Co., 139 Fed. 933, applying rule where county commissioners invested with power to make assessments, made recital in precinct bonds that they were issued under authority of specified statute fixing limit on bond issues; Green Co. v. Shortell, 116 Ky. 126, 75 S. W. 254, where county aid bonds contained no recital as to authority of issuing officers or as to performance of conditions precedent, county not estopped to plead noncompliance with conditions.

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92 U. S. 494-502, 23 L. 583, TOWN OF VENICE v. MURDOCK.

Syl. 2 (VIII, 830). Following state statutory construction.

Approved in Three States Lumber Co. v. Blanks, 133 Fed. 482, 69 L. R. A. 283, 66 C. C. A. 353, state decisions as to what will excuse plaintiff for nonreturn of property replevied, under Tennessee statutes, are not binding on federal court; Wiemer v. Louisville Water Co., 130 Fed. 255, state decision denying mandamus to compel certain action on part of water company does not bind federal court in equity suit under similar circumstances, where under state statutes as previously construed, court must have held that mandamus did not lie against corporation like defendant.

92 U. S. 503-509, 23 L. 621, CONVERSE v. CITY OF FORT SCOTT.

(VIII, 831.) Miscellaneous. Cited in dissenting opinion in City of Wichita v. Old Colony Trust Co., 132 Fed. 654, 66 C. C. A. 19, arguendo.

92 U. S. 509-516, 23 L. 738, CARROL v. GREEN.

Syl. 1 (VIII, 831). When limitations run on stockholder's liability.

Approved in Bennett v. Thorne, 36 Wash. 265, 78 Pac. 940, 68 L. R. A. 113, action to enforce bank stockholder's additional liability must be enforced six years after bank's insolvency.

Syl. 3 (VIII, 832). Stockholder's liability is contract liability.

Approved in dissenting opinion in McClaine v. Rankin, 197 U. S. 167, 168, 49 L. 708, 709, 25 Sup. Ct. 410, majority holding personal liability of national bank stockholders for debts of bank is not contractual liability, for purpose of applying statute of limitations.

Distinguished in McClaine v. Rankin, 197 U. S. 162, 49 L. 706, 25 Sup. Ct. 410, personal liability of national bank stockholders for debts of bank is not contract liability, for purpose of applying statute of limitations.

92 U. S. 520-530, 23 L. 742, UNITED STATES v. DICKELMAN.

Syl. 2 (VIII, 833). Martial law.

See 98 Am. St. Rep. 773, note.

92 U. S. 531-541, 23 L. 623, BOARD OF LIQUIDATION v. McCOMB.

Syl. 1 (VIII, 834). State not suable without consent.

Approved in Southern Ry. Co. v. Greensboro Ice etc. Co., 134 Fed. 93, suit against state corporation commission to enjoin violation of order alleged to interfere with interstate commerce is not one against state; Berman v. Minnesota etc. Society, 93 Minn. 127, 100 N. W. 732, state agricultural society cannot be sued for wrongful conduct of its servants.

Syl. 3 (VIII, 835). Mandamus to compel official duty.

Approved in Smith v. Alexander, 146 Fed. 108, denying preliminary injunction in suit against state commissioners, purpose of which is to

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secure enforcement of contract between complainant and state according to complainant's interpretation. See 108 Am. St. Rep. 838, note.

Syl. 4 (VIII, 836). Injunction to restrain official action.

Approved in Burke v. Snively, 208 Ill. 337, 70 N. E. 329, bill to restrain canal commissioners from applying sums appropriated by statute to maintenance of canal on ground that act was void, is not suit against state.

92 U. S. 542-569, 23 L. 588, UNITED STATES v. CRUIKSHANK.

Syl. 5 (VIII, 838). First ten amendments restrict government.

Approved in Ex parte Munn, 140 Fed. 783, federal court cannot on habeas corpus discharge one confined for contempt by state court for refusing to answer questions on ground that questions might incriminate him; In re Briggs, 135 N. C. 121, 47 S. E. 404, upholding Code, § 1215, providing that no one shall be excused in prosecution from testifying touching any gambling done by himself or others, but that no evidence given by him shall be used against him in criminal prosecution; Schissler v. State, 122 Wis. 378, 99 N. W. 596, 68 L. R. A. 940, upholding Rev. St. 1898, § 4699, providing that after jury has found on special issue that defendant was not insane at time of commission of offense, his trial on plea of not guilty shall proceed before same jury.

Syl. 6 (VIII, 839). Government's grant of privileges to citizens restricted.

Approved in Curley v. United States, 130 Fed. 6, 64 C. C. A. 369, Rev. St., § 5440, relating to conspiracies to defraud United States applies to rights of United States created subsequent to its passage.

Syl. 11 (VIII, 840). Fourteenth amendment adds no rights.

Approved in United States v. Moore, 129 Fed. 635, federal courts have no jurisdiction to punish conspiracy to oppress citizen to prevent him from establishing miner's union in a state, in furtherance of which defendants assaulted such citizen; McKinster v. Sager, 163 Ind. 679, 106 Am. St. Rep. 268, 72 N. E. 857, 68 L. R. A. 273, holding void act of 1903, making void as to certain creditors sales by merchant of stock except on complying with statutory conditions; Schissler v. State, 122 Mo. 378, 99 N. W. 597, 68 L. R. A. 940, upholding Rev. St. 1898, § 4699, providing that after jury has found on special issue that defendant was not insane at time of commission of offense, his trial on plea of guilty shall proceed before same jury.

Syl. 13 (VIII, 841). Suffrage not attribute of citizenship.

Approved in State v. Weber, 96 Minn. 430, 105 N. W. 493, upholding constitutional provisions limiting suffrage, as respecting naturalized citizen to such as are admitted three months prior to election; Porter v. Commissioners of Kingfisher Co., 6 Okl. 556, 51 Pac. 743,

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holding void act of 1897, providing for election of separate school boards for white and colored people.

Syl. 14 (VIII, 841). Indictment—Conspiracy to prevent suffrage by negroes.

Approved in United States v. Allen, 150 Fed. 154, 155, indictment under Rev. St., § 4046, averring that defendant was clerk employed in money order office, and charging offense in language of statute, is insufficient; United States v. Green, 136 Fed. 652, 658, holding insufficient indictment under Rev. St., § 5451, for bribing government officer, and upholding indictment under Rev. St., § 5440, for conspiracy to defraud United States; Curley v. United States, 130 Fed. 3, 64 C. C. A. 369, arguendo.

Syl. 15 (VIII, 842). Requisites of indictment.

Approved in United States v. Martindale, 146 Fed. 291, under indictment against national bank official for misapplication of funds by drawing checks on bank when he had no deposit, where there is apparent credit on books, government cannot show fictitious credit of previous deposit; United States v. Green, 136 Fed. 641, 643, 656, 658, 659, holding insufficient indictment under Rev. St., § 5451, for bribery and upholding indictment under Rev. St., § 5440, for conspiracy to defraud United States; State v. Rosenblatt, 185 Mo. 121, 83 S. W. 977, upholding indictment under Rev. St. 1899, § 2194, punishing setting up of gambling device; State v. Van Pelt, 136 N. C. 639, 672, 49 S. E. 180, 191, 68 L. R. A. 760, holding insufficient indictment charging conspiracy to injure one in his business because he was unfair to union labor; State v. Piper, 73 N. H. 228, 60 Atl. 743, holding void indictment under statute punishing bank official making false entry in books with intent to deceive any bank official or bank commissioners; Slover v. Territory, 5 Okl. 509, 49 Pac. 1010, holding void indictment for robbery stating that goods were taken from person or immediate presence of person robbed.

Distinguished in State v. Collett, 9 Idaho, 613, 75 Pac. 272, upholding information charging larceny of one horse.

92 U. S. 575-618, 23 L. 663, STATE RAILROAD TAX CASES.

Syl. 2 (VIII, 846). Capital stock and franchises taxable.

Approved in State v. Savage, 65 Neb. 747, 91 N. W. 721, following rule; New York v. State Board of Tax Commrs., 199 U. S. 40, 50 L. 76, 25 Sup. Ct. 715, N. Y. Laws 1899, c. 712, imposing special franchise tax, does not impair obligation of contract by which street railways granted franchise in consideration of payment of percentage of earnings; American Smelting etc. Co. v. People, 34 Colo. 246, 82 Pac. 533, upholding Sess. Laws 1902, p. 73, c. 3, § 65, imposing annual license tax on foreign corporations based on capital stock. See 105 Am. St. Rep. 701, note.

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Syl. 5 (VIII, 847). Taxation—Value of corporate property, how determined.

Approved in State v. Savage, 65 Neb. 759, 91 N. W. 725, following rule; Consolidated Gas Co. v. Mayor, 101 Md. 553, 109 Am. St. Rep. 594, 61 Atl. 537, 1 L. R. A. (N. S.) 263, holding under Code Pub. Sess. Laws 1904, art. 81, §§ 2, 92, 210, appeal tax court in assessing value of easements in street belonging to gas company cannot charge corporation company's own outstanding obligation.

Syl. 6 (VIII, 847). Taxation—Situs of personalty.

Approved in Chicago etc. R. Co. v. State, 128 Wis. 665, 108 N. W. 589, upholding Laws 1903, p. 491, c. 315, relating to taxation of railway property.

Syl. 7 (VIII, 848). Increase of assessed value without notice.

Approved in Hodge v. Muscatine County, 121 Iowa, 490, 104 Am. St. Rep. 304, 96 N. W. 971, 67 L. R. A. 624, upholding Code, § 5007, imposing tax on vendor of cigarettes and on buildings used in their manufacture or sale; Streight v. Durham, 10 Okl. 369, 61 Pac. 1099, applying rule to action of city board of equalization under Stat. 1893, § 5620; Foster v. Rowe, 128 Wis. 335, 107 N. W. 639, upholding Rev. St. 1898, §§ 1077a, b, providing for appointment of commissioners to equalize values between different municipalities in counties.

Syl. 8 (VIII, 849). Conclusiveness of board's determination of values.

Approved in Kersey v. Terre Haute, 161 Ind. 474, 68 N. E. 1029, upholding city ordinance taxing vehicles using streets but omitting to tax street-cars, automobiles and vehicles of nonresidents.

Distinguished in Consolidated Gas Co. v. Mayor, 101 Md. 558, 109 Am. St. Rep. 598, 61 Atl. 538, 1 L. R. A. (N. S.) 263, where, in contest over alleged assessment of street easements belonging to corporation, it appeared there was no assessment, there is no presumption in favor of its accuracy; Bardwick v. Dillon, 7 Okl. 549, 54 Pac. 789, board of equalization in equalizing assessment-rolls cannot increase valuation of property of individual in excess of its true cash value.

Syl. 9 (VIII, 849). Different rule of taxation for railroads and persons.

Approved in Michigan R. R. Tax Cases, 138 Fed. 239, upholding Michigan act of 1901, providing for assessment of railroad property.

Syl. 10 (VIII, 849). What is uniformity of taxation.

Approved in Chicago etc. R. Co. v. State, 128 Wis. 615, 108 N. W. 571, upholding taxation of railroad as unit.

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Syl. 11 (VIII, 850). Injunction against collection of tax.

Approved in Illinois Life Ins. Co. v. Newman, 141 Fed. 451, denying federal equity jurisdiction to enjoin collection of state tax on ground of illegality, though such power conferred in state courts; Western Inv. etc. Co. v. Murray, 6 Ariz. 222, 56 Pac. 730, under Laws 1897, Act No. 51, relating to taxation of national bank shares, assessment of shares in name of bank instead of in name of shareholders is mere irregularity; Humbird Lumber Co. v. Thompson, 11 Idaho, 629, 83 Pac. 946, complaint in suit to enjoin assessor from selling property to satisfy tax levy regular in form that only alleges "cash value" or "fair value," does not comply with Sess. Laws 1901, p. 238, § 10; McConnell v. Hampton, 164 Ind. 550, 73 N. E. 1092, where assessor has initiated proceedings to place on tax duplicates assessments for personalty omitted in previous years, injunction refused at suit of taxpayer; dissenting opinion in San Francisco Nat. Bank v. Dodge, 197 U. S. 111, 49 L. 687, 25 Sup. Ct. 384, majority holding discrimination against national and in favor of state banks results from taxation of national bank shares under Cal. Pol. Code, §§ 3608-3610, at market value, where value of franchise not included in computing market value of shares in state banks.

Distinguished in Fargo v. Hart, 193 U. S. 503, 48 L. 767, 24 Sup. Ct. 498, enjoining assessment of property of nonresident express on mileage basis.

Syl. 13 (VIII, 852). Injunction against excessive tax—Tender.

Approved in Wilson v. Green, 135 N. C. 353, 354, 47 S. E. 473; Halff v. Green, 10 Okl. 339, 62 Pac. 817, Lasater v. Green, 10 Okl. 337, 62 Pac. 816, and Collins v. Green, 10 Okl. 250, 62 Pac. 815, all following rule; Couts v. Cornell, 147 Cal. 563, 109 Am. St. Rep. 168, 82 Pac. 195, applying rule in suit to declare invalid assessment for taxes and sales and certificates made thereunder; Denver v. Kennedy, 33 Colo. 93, 80 Pac. 126, applying rule in suit to annul excessive improvement assessment; Power v. Detroit, 139 Mich. 39, 102 N. W. 292, where taxpayer refuses to pay any portion of his assessment for street improvement and litigates whole of it, he is liable for interest and penalties fixed on portion of assessment held valid; Douglas v. City of Fargo, 13 N. D. 486, 101 N. W. 925, applying rule in suit to set aside delinquent tax sale and to cancel assessment.

Distinguished in Jones v. Holzapfel, 11 Okl. 422, 68 Pac. 516, enjoining collection of assessment without tender where entire tax fails by reason of illegality of assessment.

Syl. 14 (VIII, 853). Following state statutory construction.

Approved in Columbia Ave. Sav. Fund etc. Co. v. Dawson, 130 Fed. 175, under Georgia constitution, city cannot exempt water company from payment of ad valorem tax on its property for city purposes.

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Syl. 15 (VIII, 853). State tax on proportional mileage.

Approved in State v. Canadian Pac. Ry. Co., 100 Me. 207, 60 Atl. 903, where railroad is chartered to operate, in connection with transportation business, steamer lines across waters beyond its termini, length of such lines should be excluded from computation in determining franchise tax; Chicago etc. R. Co. v. State, 128 Wis. 663, 108 N. W. 588, upholding Laws 1903, p. 491, c. 315, applying average rate of taxation on general property for one year on value of railway property as to such year.

92 U. S. 618-625, 23 L. 513, LEWIS v. UNITED STATES.

Syl. 7 (VIII, 855). Equity—Marshaling assets.

Approved in Harrigan v. Gilchrist, 121 Wis. 345, 99 N. W. 975, receiver may burden trust fund with expense of converting into money property in which he has only equitable title, creditors of insolvent having property as collateral, though no surplus is obtainable therefrom.

Distinguished in Van Winkle v. Blachford, 54 W. Va. 650, 46 S. E. 601, creditor of insolvent, after having applied on debt due him value of securities in his hands, can prove only balance due him against estate of insolvent.

Syl. 8 (VIII, 855). Pledgee may enforce direct remedy.

Approved in Sternberger v. Sussman, 69 N. J. Eq. 200, 60 Atl. 196, mortgagee may foreclose, though mortgage is also lien on lands in another state which are adequate security.

92 U. S. 625-631, 23 L. 628, TOWN OF CONCORD v. PORTSMOUTH SAVINGS BANK.

Syl. 2 (VIII, 856). Municipal bonds to pay railroad donation.

Approved in Paige v. Town of Rochester, 137 Fed. 665, where town railroad aid subscription provides that selectmen were authorized to contract with railroad, which contract should embody terms of "foregoing note," making of contract not necessary to entitle railroad's receiver to benefit of subscription on compliance with terms of note; Farmers' Loan etc. Co. v. Sioux Falls, 131 Fed. 912, city could not, under Const. S. D., art. 13, § 4, as amended in 1902, issue bonds for waterworks on note taken before its adoption, under statute providing that majority of electors should be determined by vote for mayor at last preceding city election.

92 U. S. 631-637, 23 L. 631, COUNTY OF MOULTRIE v. SAVINGS BANK.

Syl. 3 (VIII, 857). Municipal aid bonds—Subsequent prohibition.

Approved in May v. Cass County, 12 N. D. 142, 96 N. W. 294, where county commissioners issued twenty-year drainage bonds under Rev. Codes 1899, § 1474, but before bonds actually signed and delivered

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statute amended so that bonds issued thereunder should mature in from three to seven years, amendment did not apply to such bonds; Red River Furnace Co. v. Tennessee etc. R. R. Co., 113 Tenn. 716, 87 S. W. 1020, where after popular vote council passed resolution authorizing mayor to subscribe for stock, but no subscription made until eight months later, subscription not completed until actual subscription.

92 U. S. 665-676, 23 L. 757, CENTRAL R. R. ETC. CO. v. GEORGIA.

Syl. 1 (VIII, 862). Dissolution of old by consolidation of corporations.

Approved in Gladding v. Saint Matthews Church, 25 R. I. 635, 105 Am. St. Rep. 904, 57 Atl. 863, where testatrix bequeathed property to New York corporation, but before her death corporation consolidated with another under N. Y. Laws 1896, p. 23, consolidated corporation does not take under will.

92 U. S. 695-698, 23 L. 763, THE ALABAMA AND THE GAMECOCK.

Syl. 1 (VIII, 866). Collision—Both vessels at fault.

Distinguished in The Eagle Point, 136 Fed. 1014, where two British vessels are both in fault for collision on high seas, cargo owner may recover full damages from either vessel.

92 U. S. 698-716, 23 L. 690, HOT SPRINGS CASE.

Syl. 3 (VIII, 867). Reservation to government—Withdrawal from pre-emption.

Approved in McDonald v. Union P. R. Co., 70 Neb. 350, 97 N. W. 441, state court has no jurisdiction to compel conveyance of lands subject to homestead entry to one who has been denied privilege of making entry by federal land officials.

92 U. S. 716-723, 23 L. 764, BURDELL v. DENIG.

Syl. 3 (VIII, 868). Profits as damages for patent infringement.

Distinguished in Brown v. Lanyon, 148 Feb. 839, action at law cannot be maintained for sole purpose of recovering profits made by patent infringer.

92 U. S. 724-728, 23 L. 767, HAMMOND v. MASON & HAMLIN ORGAN CO.

Syl. 1 (VIII, 869.) "Legal representatives" include assignees.

Approved in Lowry v. City of Duluth, 94 Minn. 99, 101 N. W. 1061, under Duluth charter requiring affidavit by contractor or personal representative that all claims for labor have been paid, assignee of balance due on contract may make affidavit.

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Syl. 3 (VIII, 870). Demand not necessary where delivery refused.

Approved in Rochford v. School District, 17 S. D. 544, 97 N. W. 747, complaint in action on school district order alleging that payment refused need not allege demand.

92 U. S. 733-760, 23 L. 634, LEAVENWORTH ETC. R. R. CO. v UNITED STATES.

Syl. 2 (VIII, 870). Statutes—Rights against government not implied.

Approved in Story v. Woolverton, 31 Mont. 355, 78 Pac. 590, federal act of Feb. 13, 1891, granting Montana one section of land of former military reservation to be selected so as to embrace buildings and improvements thereon, did not grant right to use of water of stream from which government had taken water by means of ditch across other lands.

Syl. 3 (VIII, 871). Land grants in praesenti.

Approved in United States v. Detroit Timber etc. Co., 200 U. S. 334, 50 L. 504, 26 Sup. Ct. 282, doctrine of relation protects bona fide purchaser of timber lands from patentees against consequences of entryman's wrongful conduct; United States v. Montana Lumber etc. Co., 196 U. S. 577, 49 L. 605, 25 Sup. Ct. 367, until government survey of odd and even sections within limits of railroad grant of July 2, 1864, government may recover value of timber cut from land; State v. Trustees of Internal Improvement Fund, 47 Fla. 322, 35 So. 993, applying rule in construing act of Congress March 3, 1845, granting school lands to Florida; Sage v. Rudnick, 91 Minn. 331, 100 N. W. 107, applying rule to grant by state under Sp. Laws 1867, p. 11, c. 9; Okanogan Co. v. Cheetham, 37 Wash. 687, 80 Pac. 263, 70 L. R. A. 1027, where general public had used highway for seven years over public lands before homestead entry, such user was acceptance of grant made by Rev. St. U. S., § 2477; dissenting opinion in Sage v. Rudnick, 91 Minn. 328, 98 N. W. 90, majority holding that time during which right of plaintiff's grantor was in litigation in federal land office does not count in computing limitations.

Syl. 6 (VIII, 873). Indians' right of occupancy.

Approved in Winters v. United States, 143 Fed. 748, grantee of public lands outside of Ft. Belknap reservation could not acquire exclusive right to waters of Milk river for irrigation under desert land act of 1891.

Syl. 7 (VIII, 874). Lands appropriated severed from public domain.

Approved in United States v. Chicago etc. Ry. Co., 148 Fed. 890, 893, where at time of passage of railroad grant act and at time of filing location map lands within place limits were selected by state agents as swamp lands, but selections not approved, such lands not

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excluded from grant; Oregon etc. R. Co. v. United States, 148 Fed. 606, and United States v. Oregon etc. R. Co., 143 Fed. 771, both holding railroad grant of July 25, 1866, did not embrace land which at time of passage of act was subject to live homestead entry, though entry relinquished prior to filing of map of definite location; Northern Lumber Co. v. O'Brien, 139 Fed. 616, 619, withdrawal of public lands along route of railroad in aid of which land grant made, by land officials before definite location of road, excludes them from subsequent grant; Gibson v. Anderson, 131 Fed. 42, 65 C. C. A. 277, where mining locations on Indian reservation made on day act subjecting such lands to mineral entry passed, but on same day resolution passed suspending operation of act until later day, right to locate suspended; Scott v. Carew, 196 U. S. 111, 49 L. 406, 25 Sup. Ct. 193, under act of April 22, 1826, lands appropriated for military reservation could not be pre-empted till post abandoned; State v. Trustees of Internal Improvement Fund, 47 Fla. 325, 35 So. 995, swamp land acts of Congress of Sept. 28, 1850, and March 3, 1857, do not embrace lands granted to Florida by act of March 3, 1845.

92 U. S. 761-766, 23 L. 769, NEWHALL v. SANGER.

Syl. 1 (VIII, 877). What lands are public lands.

Approved in United States v. Chicago etc. Ry. Co., 148 Fed. 893, where at time of passage of act of May 12, 1864, granting to Iowa state aid lands, and at time of filing railroad location map, certain lands within place limits were selected by state agents as swamp lands, but selections not approved, such lands passed by grant; Morris v. Bean, 146 Fed. 433, determining right to appropriate waters running through Indian reservation; Northern Lumber Co. v. O'Brien, 139 Fed. 616, withdrawal of public lands along route of railroad in aid of which land grant made, by land officials before definite location of road, excludes them from subsequent grant.

Syl. 3 (VIII, 878). Lands within sub judice Mexican grant.

Approved in Scott v. Carew, 196 U. S. 111, 49 L. 406, 25 Sup. Ct 193, under act of April 22, 1826, lands appropriated for military reservation could not be pre-empted till post abandoned; United States v. Chicago etc. Ry. Co., 148 Fed. 889, where at time of passage of land grant act and at time of filing location map, certain lands within place limits were selected by state agents as swamp lands, but selections not approved, such lands passed by grant; United States v. Tully, 140 Fed. 904, determining whether lands occupied but not legally reserved for military post were such so as to give federal court jurisdiction over crime committed thereon; Southern Pac. R. Co. v. United States, 133 Fed. 666, 66 C. C. A. 581, where at time of attaching of railroad land grant certain lands within place limits were within boundaries of Mexican grant as previously surveyed,

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railroad grant did not include such lands, though on later survey some of such land excluded.

Syl. 4 (VIII, 879). Statutes—Importing words to change meaning.

Approved in United States v. Simon, 146 Fed. 94, under Bankr. Act 1898, c. 541, § 7, providing that no testimony given by bankrupt shall be used against him in criminal proceeding, bankrupt cannot be convicted of perjury for false testimony given in support of claim filed against bankrupt estate.

XCIII UNITED STATES.

93 U. S. 4-14, 23 L. 782, SOUTH CAROLINA v. GEORGIA.

Syl. 7 (VIII, 882). Commerce—Removal of obstructions to navigation.

Approved in United States v. Union Bridge Co., 143 Fed. 386, upholding Comp. St. 1901, p. 3545, requiring alteration of bridges on determination of Secretary of War that bridge obstructs navigation.

Syl. 9 (VIII, 883). Commerce—Harbor improvement acts—Secretary of War.

Approved in United States v. Union Bridge Co., 143 Fed. 387, upholding Comp. St. 1901, p. 3545, requiring alteration of bridges in determination of Secretary of War that bridge obstructs navigation.

93 U. S. 18-24, 23 L. 787, EX PARTE PARKS.

Syl. 1 (VIII, 883). Supreme court—Matters reviewable.

Approved in Bradford v. Southern Ry. Co., 195 U. S. 250, 49 L. 181, 25 Sup. Ct. 55, writs of error from circuit court of appeals cannot be prosecuted without security for costs.

Syl. 2 (VIII, 884). Matters reviewable on habeas corpus.

Approved in Hyde v. Shine, 199 U. S. 83, 50 L. 97, 25 Sup. Ct. 760, sufficiency of indictment not reviewable on habeas corpus to sustain removal to another district; Dimmick v. Tompkins, 194 U. S. 552, 48 L. 1115, 24 Sup. Ct. 780, error in sustaining indictment which fails to charge with sufficient certainty same particular fact not reviewed on habeas corpus after conviction; Kepner v. United States, 195 U. S. 130, 49 L. 124, 24 Sup. Ct. 797, arguendo.

Syl. 3 (VIII, 885). Habeas corpus—Lack of jurisdiction.

Approved in Jamison v. Wunbish, 130 Fed. 361, discharging on habeas corpus one sentenced by police court for minor offense to seven months on chain-gang; Ex parte Harlan, 1 Okl. 50, 27 Pac.

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921, habeas corpus does not lie where trial court acquired jurisdiction of subject matter and of person to determine whether indictment sufficiently charged perjury; dissenting opinion in Rush v. Buckley, 100 Me. 338, 61 Atl. 781, 70 L. R. A. 464, arguendo.

Syl. 8 (VIII, 887). Habeas corpus—Jurisdiction only inquired into.

Approved in Ex parte Moran, 144 Fed. 601, 604, upholding jurisdiction of circuit court of appeals on habeas corpus to review jurisdiction of territorial court to imprison one convicted of capital crime.

Syl. 9 (VIII, 887). Habeas corpus—Review of sufficiency of indictment.

Approved in Ex parte Moran, 144 Fed. 604, refusing to discharge on habeas corpus one convicted by territorial court under indictment by illegally selected and disqualified grand jurors.

93 U. S. 24-37, 23 L. 789, NEW YORK LIFE INS. CO. v. STATHAM.

Syl. 1 (VIII, 887). Life policy not contract for year.

Approved in Stramback v. Fidelity etc. Ins. Co., 94 Minn. 287, 102 N. W. 733, and Stinchcombe v. New York Life Ins. Co., 46 Or. 321, 80 Pac. 215, both following rule; Provident Sav. Life etc. Soc. v. Taylor, 142 Fed. 712, affirming Taylor v. Provident Sav. Life etc. Soc., 134 Fed. 934, applying rule to policy running for five years providing for payment of first premium in advance and for payment of equal sum every year.

Syl. 4 (VIII, 889). Insurance—Forfeiture for nonpayment of premiums.

Approved in Nederland Life Ins. Co. v. Minert, 199 U. S. 181, 50 L. 143, 26 Sup. Ct. 15, prefixing words "conditions of your policy provide" to notice of time for payment of premium required by statute does not render notice insufficient.

Distinguished in Battin v. Northwestern Mut. L. Ins. Co., 130 Fed. 876, 65 C. C. A. 358, declaration on policy alleging that when premium became due insured paid less sum which was accepted on account and credit given for balance, is sufficient allegation of waiver of clause forfeiting policy for nonpayment.

Syl. 5 (VIII, 889). Insurance—Premiums—Time of essence.

Approved in M'Dougald v. New York Life Ins. Co., 146 Fed. 679, where insurer made no attempt to cancel California policy until after lapse of one year after default in premium, Laws N. Y. 1897, p. 92, § 2, prohibiting forfeiture for nonpayment within one year unless notice mailed to insured, is not applicable; Mutual Life Ins. Co. v. Blair, 130 Fed. 974, where equity has jurisdiction of persons and subject matter of bill to cancel policy for fraud prior to insured's death, death of insured before answer and action on policy do not deprive court of jurisdiction; London etc. Accident Co. v.

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Siwy, 35 Ind. App. 346, 66 N. E. 483, where employer's liability policy required assured to give immediate notice of claim on account of accident to employee, failure to give notice immediately works forfeiture; Supreme Lodge K. of H. v. Jones, 35 Ind. App. 130, 69 N. E. 721, applying rule to fraternal benefit insurance.

Distinguished in Graham v. Security Mut. Life Ins. Co., 72 N. J. L. 304, 62 Atl. 683, holding provision in life policy as to forfeiture for nonpayment of premium waived; Aetna Life Ins. Co. v. Fallow, 110 Tenn. 729, 77 S. W. 939, where according to course of business between insurer's general agent and insured latter directed to retain premiums till called for, insurer estopped to deny liability for failure to pay premium prior to accident.

Syl. 11 (VIII, 891). What is value of insurance policy.

Approved in Mutual etc. Life Assn. v. Ferrenbach, 144 Fed. 346, damages for wrongful cancellation of policy for nonpayment of premiums which were in form of assessments are amount of policy less cost of carrying it to maturity, on six per cent basis as of date of cancellation.

93 U. S. 38-41, 23 L. 794. TERRY v. ABRAHAM.

Syl. 1 (VIII, 892). Modification of decree on appeal—Parties.

Approved in Gray v. Grand Forks etc. Co., 138 Fed. 345, 346, on appeal by bankruptcy trustee from bankruptcy court decree allowing claims for expenses of administration, claimants must be before court to warrant determination of question.

93 U. S. 46-55, 23 L. 797, BEAVER v. TAYLOR.

Syl. 4 (VIII, 894). Object of exception to instructions.

Approved in Montana Min. Co. v. St. Louis Min. etc. Co., 147 Fed. 908, where judge after instructing jury, but before sending them out, retired to chambers with counsel and there heard and allowed exceptions, he need not afterward allow further exceptions.

93 U. S. 55-63, 23 L. 798, GRYMES v. SANDERS.

Syl. 1 (VIII, 895). Equitable relief for mistake of fact.

Approved in Vallentyne v. Immigration Land Co., 95 Minn. 198, 103 N. W. 1029, refusing to rescind executory contract for sale of land on ground of mistake not mutual; Travelers' Ins. Co. v. Jones, 32 Tex. Civ. 149, 73 S. W. 979, applying rule with reference to contract of insurance requiring payments of premium in installments where insured only made mistake.

Syl. 2 (VIII, 895). Equitable relief for mistake—Negligence.

Approved in Newman v. Kay, 57 W. Va. 125, 49 S. E. 936, contract for sale of land in gross cannot be rescinded because of mutual mistake as to quantity of land sold, where no fraud shown.

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Syl. 3 (VIII, 896). Rescission of contract for fraud—Diligence.

Approved in Richardson v. Lowe, 149 Fed. 628, where four months after possession defendant learned of misrepresentations as to richness of mines but continued to work them for two years, he cannot set up fraud in defense of suit to foreclose purchase money mortgage; Burk v. Johnson, 146 Fed. 218, when purchaser of assignment of right to organize burial associations under copyrighted plan discovered falsity of seller's representations within month after sale, but continued to operate under contract for over one year, fraud waived; Burnes v. Burnes, 137 Fed. 800, 70 C. C. A. 357, applying rule to family settlement of estate; Russell v. Russell, 129 Fed. 439, widow not barred by laches from maintaining suit to set aside antenuptial agreement for fraud, instituted immediately after losing prior suit for its reformation where she always asserted invalidity of agreement; Seeley v. Seeley-Howe-Le Van Co., 130 Iowa, 629, 631, 105 N. W. 381, 382, where sale induced by fraudulent representations of buyer, and latter sold some of goods and seller attempted to collect purchase price on all, seller ratified entire sale; Speicher v. Thompson, 141 Mich. 666, 104 N. W. 1108, where purchasers of majority stock of corporation became its managers, continued business after learning of fraud on part of sellers;Patterson v. Hewitt, 11 N. M. 42, 66 Pac. 564, 55 L. R. A. 658, applying rule with reference to assertion of claims arising out of verbal agreement with reference to abandonment of conflicting mining locations and making of new locations; Burnham v. Burnham, 119 Wis. 516, 97 N. W. 179, where one expressed approval of deed and settlement, and after employing counsel to contest same for fraud procured mortgage to pay debts in pursuance of settlement, he ratified same.

93 U. S. 72-78, 23 L. 806, CHEMUNG CANAL BANK v. LOWERY.

Syl. 2 (VIII, 900). Demurrer raising defense of limitations.

Approved in Providence Gold Min. Co. v. Marks, 7 Ariz. 79, 60 Pac. 940, in action to establish adverse claim to mining location issue that action not brought within thirty days after adverse claim filed, as required by U. S. Rev. St., § 2326, cannot be raised on motion for judgment or to strike complaint from files.

Syl. 3 (VIII, 901). Following state practice—Demurrer for limitations.

Approved in J. W. Bishop Co. v. Shelhorse, 141 Fed. 646, under Virginia practice declaration in action for wrongful death alleging in one count separate acts of negligence, any one of which would constitute sufficient cause for action, but which may have been concurrent causes producing injury, is proper.

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93 U. S. 78-85, 23 L. 807, RYAN v. CARTER.

Syl. 3 (VIII, 901). Title—Statute confirming land claims.

Approved in Catron v. Laughlin, 11 N. M. 628, 629, 631, 72 Pac. 31, 32, when Congress confirmed Mexican grant as recommended by New Mexico Surveyor General, it adjudicated title valid for all land claimed; Kneeland v. Korter, 40 Wash. 469, 82 Pac. 611, 1 L. R. A. (N. S.) 745, where tide land between high and low water mark within place limits of railroad grant had been surveyed and defined and railroad had performed conditions before state admitted, railroad entitled to land under constitution by which state disclaimed title to patented tide lands, though patent issued after constitution adopted.

Syl. 4 (VIII, 902). Statutes—Exceptions in proviso.

Approved in Long v. Pennsylvania R. Co., 149 Fed. 600, under P. L. N. J. 1906, p. 525, authorizing actions by married woman in own name for torts against her or her separate property, husband is improper party; Gould v. New York Life Ins. Co., 132 Fed. 930, under proviso to Bankr. Act 1898, § 70a, subd. 5, giving right to bankrupt to retain life policy having surrender value by paying value to trustee, policy having no valid value as assets does not pass to trustee.

93 U. S. 92-96, 23 L. 815, DRESSER v. MISSOURI & IOWA RY. & CON. CO.

Syl. 5 (VIII, 905). Amount recoverable by bona fide purchaser.

Approved in Gamble v. Rural Ind. School Dist., 132 Fed. 524, purchaser of overdue and dishonored municipal bond of face value, including interest of over $2,000, for $50, bond being invalid in hands of original holder, of which purchaser had notice, can recover only purchase price though seller was bona fide purchaser.

93 U. S. 99-108, 23 L. 819, SHERLOCK v. ALLING.

Syl. 4 (VIII, 908). Legislation affecting interstate commerce.

Approved in Howard v. Illinois Central R. Co., 148 Fed. 1001, holding void employer's liability act of 1906; Kavanaugh v. Southern Ry. Co., 120 Ga. 63, 47 S. E. 527, upholding Civ. Code 1895, § 2298, relating to liability of connecting railroads for through shipments; Commonwealth v. Strauss, 191 Mass. 555, 78 N. E. 139, upholding Rev. Laws, c. 56, § 1, prohibiting persons doing business in state from making it condition of sale of goods that purchaser shall not deal in goods of others; People v. Reardon, 184 N. Y. 457, 112 Am. St. Rep. 646, 77 N. E. 979, upholding Laws 1905, pp. 474, 477, §§ 315, 324, imposing tax on transfers of corporate shares; Walker v. Southern Ry. Co., 137 N. C. 168, 49 S. E. 86, upholding Acts 1903, p. 999, penalizing railroad failing to transport goods received for shipment to place within state, for more than four days after their receipt. See 98 Am. St. Rep. 607, note.

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Syl. 6 (VIII, 909). Congressional regulation of interstate commerce exclusive.

Approved in Howard v. Illinois Central R. Co., 148 Fed. 1002, holding void employer's liability act of 1906.

93 U. S. 108-116, 23 L. 822, TIPPECANOE CO. COMMISSIONERS v. LUCAS.

Syl. 5 (VIII, 912). Municipalities—State may restrict powers.

Approved in Worcester v. Worcester etc. St. Ry. Co., 196 U. S. 550, 49 L. 596, 25 Sup. Ct. 327, city cannot invoke contract clause of constitution against abrogation by state statute of provisions of contract between railroad and city with reference to street paving; Augusta v. Augusta Water Dist., 101 Me. 152, 63 Atl. 665, Augusta Water District is municipal corporation and under Rev. St., c. 9 § 6, its property is exempt from municipal taxation; Lincoln Co. v. Brock, 37 Wash. 17, 79 Pac. 478, county is municipal corporation within Const., art. 1, § 16, providing that no right of way shall be appropriated for use of any corporation other than municipal, until compensation made; dissenting opinion in Ex parte Lewis, 45 Tex. Cr. 38, 108 Am. St. Rep. 929, 73 S. W. 824, majority holding void Galveston special charter creating board of commissioners, two of whom to be locally elected and three appointed by governor.

Syl. 7 (VIII, 913). Legislative control over municipal property.

Approved in Worcester v. Worcester etc. St. Ry. Co., 196 U. S. 551, 49 L. 596, 25 Sup. Ct. 327, city cannot invoke contract clause of constitution against abrogation by state statute of provisions of contract between city and street railway with reference to street paving.

93 U. S. 116-123, 23 L. 825, HOME INS. CO. v. CITY COUNCIL OF AUGUSTA.

Syl. 4 (VIII, 914). Contracts—Taxation—Foreign corporations doing business.

Approved in Bishoff v. State, 43 Fla. 80, 30 So. 812, ordinance imposing occupation tax does not create contract right; Norfolk etc. Ry. Co. v. Suffolk, 103 Va. 501, 49 S. E. 659, Suffolk Charter, § 18, providing for occupation tax, authorizes license tax on railroad doing business in town, though it is liable to penalty under statute for failure to do business.

93 U. S. 124-130, 23 L. 826, COUNTY OF CALHOUN v. AMERICAN EMIGRANT CO.

Syl. 3 (VIII, 914). Delivery of deed in escrow—Title.

Approved in Powers v. Rude, 14 Okl. 391, 79 Pac. 93, where deed deposited in escrow to be delivered to railroad when it agreed to construct depot in certain place, grantee acquires no title by obtaining it prior to performance of condition.

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Syl. 6 (VIII, 915). Estoppel by acts of corporation.

Approved in Stewart v. Wright, 147 Fed. 328, holding bank liable for acts of cashier in assisting in furtherance of scheme to swindle by means of fake foo'races by lending banking facilities to conspirators.

93 U. S. 130-143, 23 L. 833, CLAFLIN v. HOUSEMAN.

Syl. 2 (VIII, 915). Effect of defendant's bankruptcy on state jurisdiction.

Approved in Jackman v. Eau Claire Nat. Bank, 125 Wis. 481, 104 N. W. 103, under Bankr. Act 1898, § 23b, state court has jurisdiction over action by trustee to recover value of property transferred as preference.

Syl. 5 (VIII, 916). Concurrent and exclusive jurisdiction.

Approved in Jackman v. Eau Claire Nat. Bank, 125 Wis. 482, 104 N. W. 103, under Bankr. Act 1898, § 23b, state court has jurisdiction over action by trustee to recover value of property transferred as preference.

Syl. 10 (VIII, 918). State suit by assignee in bankruptcy.

Approved in United States etc. v. United States etc. Guaranty Co., 78 Vt. 451, 63 Atl. 583, action in name of United States on contractor's bond given under Comp. St. 1901, p. 2523, may be brought in state court.

93 U. S. 143-150, 23 L. 855, HENDRICK v. LINDSAY.

Syl. 3 (VIII, 919). Damage to promisee is good consideration.

Approved in In re Dressler, 135 Fed. 498, 68 C. C. A. 207, where securities loaned by claimant to A., who pledged them to secure loans and thereafter bankrupt of which A. is a member took over all property and assumed all liabilities, transaction not within statute of frauds.

Syl. 5 (VIII, 919). Assumpsit by third party beneficiary.

Approved in Fish v. First Nat. Bank, 150 Fed. 526, where articles of agreement recited that one partner had given note for money used for firm and provided that same should be firm obligation, but before maturity firm dissolved and other partner succeeded to business and assumed liabilities, partner is liable on note; Tucker v. Curtin, 148 Fed. 934, transfer of stock by husband to wife as gift by surrendering old certificate to corporation which, by his direction, issues new one to wife, is transfer through third person, constituting perfect gift; Foster v. Leininger, 33 Ind. App. 674, 72 N. E. 165, where contract for release of telephone right of way given in consideration of placing telephone in houses of parties giving release and in plaintiff's house, plaintiff could sue for failure to put telephone in his house though he is not privity to contract.

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93 U. S. 150-155, 23 L. 840, O'HARA v. MacCONNELL.

Syl. 6 (VIII, 921). Dismissal of appeal—Satisfaction of judgment.

Approved in Hubbard v. State, 71 Ark. 469, 75 S. W. 853, defendant convicted of misdemeanor by executing mortgage to secure fine does not lose right to appeal.

Distinguished in Betts v. State, 67 Neb. 206, 93 N. W. 169, respondent in mandamus who has performed commands, after allowance of supersedeas, and before motion for new trial, disposed of, not entitled to review of question whether writ should have been granted.

93 U. S. 155-163, 23 L. 843, KERRISON v. STEWART.

Syl. 2 (VIII, 922). Suit by trustees—Beneficiaries not necessary parties.

Approved in Atlantic Trust Co. v. Chapman, 145 Fed. 823, receiver appointed at foreclosure suit by trustee in corporation mortgage need not make intervening bondholders parties to suit against trustee for expenses of receivership; In re E. T. Kenney Co., 136 Fed. 455, beneficial interest of assignors who had assigned claims against bankrupt to committee to purchase bankrupt's property and sell it for assignors, in net proceeds of claims assigned after administration of trust by committee not provable in bankruptcy; Virginia etc. Power Co. v. Fisher, 104 Va. 136, 51 S. E. 203, bondholder cannot foreclose railroad mortgage unless trustee has been requested and neglected so to do or is unable to act; Thompson v. Price, 37 Wash. 398, 79 Pac. 952, where owner of fee deeded land he held for benefit of town and to be sold to best advantage and proceeds applied to pay grantor's debts, grantors not necessary parties to foreclosure of mortgage existing at time of date.

Distinguished in Bockfinger v. Foster, 10 Okl. 493, 62 Pac. 800, in action against townsite trustees, to whom patent issued, to declare trust in favor of adverse claimant, townsite lot claimants are necessary parties.

Syl. 3 (VIII, 923). Beneficiaries bound by judgment against trustee.

Approved in In re Tiffany, 147 Fed. 316, state judgment in suit by bankrupt's trustee, refusing to set aside transfer of property made by bankrupt as fraudulent, concludes creditors, who cannot set up same to defeat discharge in bankruptcy; National Salt Co. v. Ingraham, 143 Fed. 809, determining extent of bar of judgment against corporation's trustee to hold stock on rights of certificate holder; Gray v. Grand Forks Merc. Co., 138 Fed. 345, on appeal by bankruptcy trustee from judgment allowing claims for expenses of administration, claimants are necessary parties to determination of validity of judgment; Bowling Green Trust Co. v. Virginia etc. R. Co., 132 Fed. 924, holders of minority bonds of railroad cannot intervene on foreclosure of mortgage to displacement of trustee suing on request of majority solely on ground that directors are bondholders and directors of railroad; Oklahoma City v. McMaster, 12 Okl. 584, 73 Pac. 1016, holding

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city bound by judgment against townsite trustees and in favor of occupying claimants.

93 U. S. 163-169, 23 L. 858, TILTON v. COFIELD.

Syl. 5 (VIII, 925). Amendment introducing new cause of action.

Approved in Dunn v. Mayo Mills, 134 Fed. 806, 67 C. C. A. 450, upholding allowance of amendment in action for balance due on contract, with reference to statement of claim.

Syl. 7 (VIII, 925). Amendment of pleading attachment.

Approved in First Nat. Bank v. Fish, 2 Alaska, 350, upholding amendment of undertaking on attachment before judgment; Kipp v. Burton, 29 Mont. 102, 101 Am. St. Rep. 44, 74 Pac. 87, 63 L. R. A. 325, sale made under execution defective for want of seal made prior to act of 1899, p. 145, was validated without amendment by court; Jaffray v. Wolf, 4 Okl. 321, 47 Pac. 502, amendment of attachment affidavit showing defendant had entirely disposed of property purchased of plaintiffs and that plaintiffs could not replevy same, is proper.

Syl. 8 (VIII, 926). Collateral attack on judgment.

Distinguished in Mankato v. Barber Asphalt Pav. Co., 142 Fed. 341, defendant in state court is not concluded by judgment therein, where no conflict over custody of specific property arises, from suing in federal court on same cause of action.

Syl. 10 (VIII, 926). Purchase of property pendente lite.

Approved in Miller & Lux v. Rickey, 146 Fed. 586, corporation organized by defendant in federal suit to which he has, pendente lite, conveyed water rights in litigation, may be enjoined from prosecuting state suit to determine such rights; Hargrove v. Cherokee Nation, 129 Fed. 190, 63 C. C. A. 276, in suit to recover land by Indian tribesman under 30 Stat. 495, § 3, where purchaser is brought in by amended complaint it is unnecessary to allege that membership in tribe disallowed; Bergman v. Inman, 43 Or. 460, 99 Am. St. Rep. 771, 72 Pac. 1087, in action to enforce statutory liability against one destroying property covered by logger's lien, domestic judgment declaring there was lien on logs when removed from state by defendant is admissible; Scudder v. Cox, 35 Tex. Civ. 417, 80 S. W. 873, purchaser pendente lite cannot collaterally attack judgment.

Distinguished in King v. Davis, 137 Fed. 240, Va. Code 1887, § 3566, relating to lis pendens, does not apply to federal courts; Powell v. National Bank of Commerce, 19 Colo. App. 69, 74 Pac. 540, where complaint filed August 21st, and receiver appointed same day, but receiver discharged on day following and later on same day defendant executed chattel mortgage to one having notice of proceedings, and on August 29th, order of discharge vacated and order of 21st reinstated, chattel mortgage subject to receivership.

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93 U. S. 169-173, 23 L. 812, FRENCH v. FYAN.

Syl. 1 (VIII, 927). Swamp land act—Grant in praesenti.

Approved in Kittel v. Trustees etc. Improvement Fund, 139 Fed. 947, upholding Florida grant of swamp lands before identification and patent by government.

Syl. 3 (VIII, 928). Conclusiveness of decision of special tribunal.

Approved in Semer v. Auditor General, 133 Mich. 574, 95 N. W. 734, where lands bid off to state for taxes for more than eight consecutive years without application to redeem and statutory report under Acts 1895, No. 154, § 127, filed, owner could not attack proceedings.

Syl. 4 (VIII, 929). Conclusiveness of issuance of land patent.

Approved in Le Marchel v. Teegarden, 133 Fed. 1827, one attacking land patent for mistake of fact must plead and prove evidence before department from which mistake resulted, particular mistake and way in which it occurred.

Syl. 5 (VIII, 930). Swamp land patents—Conclusiveness.

Approved in United States v. Chicago etc. Ry. Co., 148 Fed. 891, where at time of passage of railroad grant act and at date of filing location map certain lands within grant were embraced in lists of lands selected by state as swamp lands, which list filed with the Land Department, but not approved, such lands not excluded from grant; Kerns v. Lee, 142 Fed. 992, acceptance by Land Department of final proofs from homesteader and issuance of patent is conclusive that land was not swamp at time of passage of swamp land act; Welsh v. Callvert, 34 Wash. 255, 75 Pac. 873, where lands were sold by state as second-class tide lands, claim by subsequent applicant to purchase thereof as oyster lands that deed did not include lands applied for is untenable.

93 U. S. 174-188, 23 L. 872, BANK OF KENTUCKY v. ADAMS EXPRESS CO.

Syl. 1 (VIII, 932). Express companies are common carriers.

Approved in Despeaux v. Pennsylvania R. Co., 133 Fed. 1011, where plaintiffs filed assumpsit against railroad to recover for unlawful discrimination as authorized by Pa. P. L. 72, they could not, fourteen years thereafter, amend charging defendants with common-law liability on ground that charges were unreasonable; Southern Exp. Co. v. Rose Co., 124 Ga. 585, 53 S. E. 186, 5 L. R. A. (N. S.) 619, granting mandamus at suit of private party to compel express company to transport goods.

Syl. 4 (VIII, 933). Contract limiting carrier's liability.

Approved in Cau v. Texas etc. Ry. Co., 194 U. S. 431, 48 L. 1057, 24 Sup. Ct. 663, exemption of carrier from liability for damages by fire expressed in bill of lading is valid though option to ship under common-law liability not actually presented to shipper; Arthur

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v. Texas etc. Ry. Co., 139 Fed. 130, where shipper accepted bill of lading for transportation of cotton containing fire exemption clause without requesting rate under common-law liability, carrier not liable for loss by fire not due to its negligence; Southern Express Co. v. Rothenberg, 87 Miss. 659, 40 So. 65, stipulations in contract of express company that negligence of railroad shall not be imputed to express company and limiting liability for loss to $50 irrespective of value of package, are void.

Syl. 10 (VIII, 935). Railroad as express company's agent.

Approved in American Express Co. v. Ogles, 36 Tex. Civ. 409, 81 S. W. 1025, where express company obtained from railroad a train for particular shipment of stock, shipment being accompanied by express messenger, though train operated by railroad crew, express company is liable for railroad's negligence.

93 U. S. 188-198, 23 L. 846, UNITED STATES v. FORTY-THREE GALLONS OF WHISKY.

Syl. 1 (VIII, 938). Regulation of commerce with Indians.

Approved in Renfrow v. United States, 3 Okl. 166, 41 Pac. 90, Indian who has received allotment of land, taken oath of allegiance and become elector of state, is within inhibition of Rev. St., § 2139, prohibiting sale of liquor to Indians, where government has not released him from control of Indian agent.

Syl. 8 (VIII, 939). Treaty prevails over conflicting state statute.

Approved in In re Wyman, 191 Mass. 279, 77 N. E. 380, under Russian treaty of 1832, vice-consul is entitled to letters of administration of estate of Russian citizen to exclusion of public administrator.

93 U. S. 199-208, 23 L. 829, OBER v. GALLAGHER.

Syl. 8 (VIII, 940). Equity gives complete relief.

Approved in Southern Pac. R. Co. v. United States, 133 Fed. 657, 66 C. C. A. 581, upholding equity jurisdiction over suit by United States against railroad, its mortgagees and others to determine what portion of lands erroneously patented to railroad under grant are bona fide purchasers for cancellation of patents to lands not so disposed of and for accounting for moneys received by railroad for lands sold; In re Leeds Woolen Mills, 129 Fed. 926, where one obtained possession of goods from bankruptcy court's receiver which latter had no authority to surrender, and sells same, bankruptcy court may, in suit to compel him to restore it, determine question of ownership; Clark Co. Court v. Warner, 116 Ky. 807, 76 S. W. 829, where after appeal to county court for ferry privilege and appeal to circuit court party appeared, pending such cause, county court of county on other side of river had no jurisdiction of application by such party for identical ferry privilege; Cohe v. Ricketts, 111 Mo. App. 110, 85 S. W. 132, where state court acquired jurisdiction of suit to wind up affairs of building association prior to federal suit for same persons, it could

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finally determine same notwithstanding federal suit; McConnell v. Combination etc. Co., 30 Mont. 250, 104 Am. St. Rep. 703, 76 Pac. 197, though complaint in action against corporation officers for fraudulently misappropriating funds is insufficient to consider it as brought on behalf of others than plaintiffs, averment that they bring it for others as well is immaterial; Grogan v. Valley Trading Co., 30 Mont. 235, 76 Pac. 213, in action to redeem where deed absolute given as security for debt, court may determine plaintiff's right of possession where defendant makes no claim except under deed.

93 U. S. 209-216, 23 L. 849, SHERMAN v. BUICK.

Syl. 1 (VIII, 941). School lands—Prior settlement.

Distinguished in Gonzales v. French, 4 Ariz. 82, 33 Pac. 503, under Rev. St., §§ 1946, 2275, where settlers on school section failed to assert pre-emption claim after survey, but sold possessions, purchaser acquired no interest in lands.

93 U. S. 217-224, 23 L. 860, MORGAN v. LOUISIANA.

Syl. 2 (VIII, 944). Tax exemption—Foreclosure purchaser of railroad.

Approved in Rochester v. Rochester Ry. Co., 182 N. Y. 118, 74 N. E. 959, 70 L. R. A. 773, where street railway was by statute exempt from expense of repaving between tracks, right to exemption did not pass to lessee.

Syl. 3 (VIII, 946). Term "franchise" defined.

Approved in Wicomico Co. Commrs. v. Bancroft, 135 Fed. 981, under Code Md. 1888, art. 23, §§ 187, 188, relating to formation of corporation by purchaser on foreclosure of railroad, reorganized company acquired immunity from taxation for term conferred on original company by special statutes; Lake Drummond Canal Co. v. Commonwealth, 103 Va. 347, 352, 49 S. E. 509, 511, under statute providing that corporation organized on foreclosure sale of corporation shall succeed to all rights and privileges of old, immunity from taxation granted to original company did not pass to purchaser.

93 U. S. 242-247, 23 L. 779, GARFIELDE v. UNITED STATES.

Syl. 3 (VIII, 951). Cancellation of mail contract—Indemnity.

Approved in Slavens v. United States, 196 U. S. 236, 49 L. 460, 25 Sup. Ct. 229, Postmaster General may cancel mail contract service under which has been materially decreased by using street-cars to carry mail.

93 U. S. 247-258, 23 L. 882, WHITESIDE v. UNITED STATES.

Syl. 6 (VIII, 952). Government not liable for officer's acts.

Approved in United States v. Kauhoe, 147 Fed. 187, where one liable on postmaster's bond called by inspector to pay embezzlement and on request for extension of time inspector granted extension provided

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note executed to government for amount of default
Orange Co. v. Texas etc. R. R. Co., 35 Tex. Civ. 363,
where tax collector collected taxes before rolls delive
failed to turn in taxes, taxpayer is liable therefor.

93 U. S. 258-266, 23 L. 893, BARKLEY v. LEVEE COM

Syl. 1 (VIII, 953). Mandamus to officers—Aboliti
of term.

Approved in Marra v. San Jacinto etc. Irr. Dist., 131
irrigation district organized under Cal. Acts 1887, p. 2
and sold bonds, remedy of holder thereof after judgm
tion unsatisfied was mandamus to compel levy of asse
suit in equity for receivership; People v. Davidson,
83 Pac. 160, effect of County Government Act, § 56,
1901, providing that in townships of less than six thou
there shall be but one constable, was to abolish two pre
offices and created new one, and former incumbent coul

93 U. S. 266-271, 23 L. 896, BROUGHTON v. PENSAC

Syl. 1 (VIII, 954). Corporation—Obligation of co
dissolution.

Approved in Folsom v. Greenwood Co., 137 Fed. 4
473, where statute incorporated township, authorized
bonds and provided that county officer levy taxes there
boundaries changed so that township put in another c
liable for bonds; Ex parte Folsom, 131 Fed. 504, holdin
tional amendment of 1902, abolishing organization of t
had issued aid bonds; Hopkins v. Crossley, 138 Mich.
823, where funds of volunteer fire department created
placed in hands of trustees for specified purpose, after
poration ceased and corporation dissolved fund did
state.

Syl. 3 (VIII, 955). Change in municipality's chart
tory.

Approved in Gamble v. Rural etc. School Dist., 14
lowing rule; Pepin Tp. v. Sage, 129 Fed. 660, 64 C.
termining liability for bonds issued by village whi
from territory of city and township and later act
repealed; Pratt v. Dudley, 73 Ark. 541, 84 S. W. 783,
1901, p. 27, relating to creation of levee districts; Boa
Greer Co. v. Clarke, 12 Okl. 209, 70 Pac. 210, Greer Cou
is liable for valid obligations of Greer County, Texas, p
of territory of such county to former state; School Dist
tol Nat. Bank, 7 Okl. 50, 54 Pac. 311, school warrant d
clerk on county treasurer, under Laws 1890, § 6412, to
separate school fund, is not township or school dist
City of Guthrie v. Wylie, 6 Okl. 66, 55 Pac. 105, pro
Guthrie did not become de jure corporation prior to

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comply with act of May 2, 1890, relative to incorporation of villages; Blackburn v. Oklahoma City, 1 Okl. 295, 31 Pac. 783, Oklahoma City on becoming de jure corporation is liable for contracts made while it was de facto corporation; City of Guthrie v. Territory, 1 Okl. 202, 31 Pac. 194, 11 L. R. A. 418, where village has changed to city since liability of village for debts of provisional organization fixed by legislature, city is liable for such debts.

Distinguished in Folsom v. Greenwood Co., 130 Fed. 733, county which under state law can only contract such debts as are authorized by statute is not liable on bonds issued before county created by township which formerly was part of another county; Wichman v. Placerville, 147 Cal. 164, 81 Pac. 538, Stat. 1859, p. 77, reincorporating Placerville repealed bond act of 1863, authorizing city to issue bonds, and reincorporated city could not issue bonds.

93 U. S. 271-274, 23 L. 925, DALTON v. JENNINGS.

Syl. 1 (VIII, 957). Patent for hair net—Want of novelty.

Approved in West Boylston Mfg. Co. v. Wallace, 137 Fed. 926, holding void, for want of novelty, Mitchelsen patent No. 718,499, for tenting cloth.

93 U. S. 274-284, 23 L. 914, WINDSOR v. McVIEGH.

Syl. 1 (VIII, 957). Judgment in condemnation—Denial of hearing.

Approved in King v. Davis, 137 Fed. 214, where, in ejectment, there was no necessity for inquiry and court entered order reciting that defendant's time to plead having expired cause was set down for inquiry, recital was equivalent to order making office judgment final.

Syl. 3 (VIII, 959). Confiscation proceedings—Refusal to hear owner.

Approved in State v. Mosman, 112 Mo. App. 548, 87 S. W. 77, under statute requiring trial de novo on justice court appeals, circuit court has jurisdiction to try justice court appeal though justice's judgment is in excess of jurisdiction.

Syl. 4 (VIII, 959). Confiscation proceedings—Sentence without notice.

Approved in Klenk v. Byrne, 143 Fed. 1010, decree foreclosing tax lien without notice to owner rendered by court prior to suit is void; Aldredge v. School District No. 16, 10 Okl. 698, 65 Pac. 97, condemnation proceedings are void where no notice thereof given owner of property taken.

Distinguished in Bennett v. Bennett, 16 Okl. 181, 83 Pac. 555, where alimony pendente lite granted and on trial day defendant in default asks leave to answer without obeying alimony order, and court grants leave conditioned on payment of alimony in seven days, default on refusal to accept such leave is proper.

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Syl. 5 (VIII, 961). Collateral attack on judgment.

Approved in C. C. Taft Co. v. Century Sav. Bank, 141 Fed. 371, omission in petition in involuntary bankruptcy of allegation that defendant owes debts amounting to $1,000 is jurisdictional; Sylvester v. Willson, 2 Alaska, 335, order removing administrator must show compliance with statutory requirements; In re Burkell, 2 Alaska, 110, where justice of peace erroneously added "at hard labor" to sentence, habeas corpus will not lie; Wilson v. Gaylord, 77 Ark. 479, 92 S. W. 27, proof of conveyance pursuant to decree in suit to enforce payment of levee taxes, without proof of title to land in parties, does not show sufficient title in purchaser to maintain ejectment; State ex rel. Duffy v. Civil District Court of Orleans, 112 La. 196, 36 So. 320, failure to file petition for prohibition against punishment for contempt, in time, is immaterial where court had no authority to punish contempt; Keele v. Weeks, 118 Mo. App. 273, 94 S. W. 779, heir whose application to oppose allowance of claim against decedent is denied may pursue remedy under Rev. St. 1899, § 214, authorizing heir to move to vacate order allowing claim; Parker v. Lynch, 7 Okl. 651, 56 Pac. 1089, upholding jurisdiction over suit to declare resulting trust in lands alleged to have been wrongfully patented; Turner v. Barraud, 102 Va. 338, 46 S. E. 322, where only mention of infant defendant as shown by record is in bill and exception of answer of guardian ad litem appointed for other infant defendants whose interests are adverse to first, use of phrase "infant defendants" in decree is not recognition of such infant as party; State v. Godfrey, 54 W. Va. 72, 46 S. E. 192, granting prohibition restraining mayor from aiding at trial of prosecution of invalid gambling ordinance; dissenting opinion in Daniels v. Homer, 139 N. C. 268, 51 S. E. 1010, 3 L. R. A. (N. S.) 997, majority upholding Acts Gen. Assem. 1905, c. 292, § 9, relating to seizure and sale of appliances used in illegal fishing; Black v. Vermont Marble Co., 1 Cal. App. 722, 82 Pac. 1062, arguendo.

Distinguished in Estate of Sutro, 143 Cal. 492, 77 Pac. 404, failure to file complaint within time required by Code Civ. Proc., § 1664, relating to determination of rights in estate being administered, does not deprive court of jurisdiction; Bennett v. Bennett, 16 Okl. 184, 83 Pac. 556, where alimony pendente lite granted, and on trial day defendant in default asks leave to answer without obeying alimony order, and court grants leave conditioned on payment of alimony in seven days, default on refusal to accept such leave is proper.

Syl. 6 (VIII, 963). Sentence for felony without jury void.

Approved in King v. Davis, 137 Fed. 213, where, in ejectment, there was no necessity for inquiry and court entered order reciting that defendant's time to plead having expired cause was set down for inquiry, recital was equivalent to order making office judgment final.

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93 U. S. 284-288, 23 L. 918, BIGELOW v. BERKSHIRE INS. CO.

Syl. 4 (VIII, 965). Insurance—Exception of suicide—Insanity.

Approved in Robson v. United Order of Foresters, 93 Minn. 26, 100 N. W. 382, where benefit certificate made by-laws and medical examination part of contract, and by-laws and examination provided for avoidance of policy in case of suicide, sane or insane, where insured committed suicide while insane society not liable; Tisch v. Home Circle, 72 Ohio St. 258, 74 N. E. 191, where holder of benefit certificate agreed to abide by by-laws, and by-law adopted after issuance of certificate provided for forfeiture of certificate in case of suicide, sane or insane, and holder committed suicide, society not liable; Childress v. Fraternal Union of America, 113 Tenn. 256, 82 S. W. 833, where policy contained clause making it incontestable after two years, except as to representations as to age and use of alcohol, and clause reducing indemnity one-third in case of suicide, beneficiary can only recover one-third in case of suicide after two years.

93 U. S. 291-301, 23 L. 898, INDIANAPOLIS & ST. L. R. R. CO. v. HORST.

Syl. 2 (VIII, 967). Instructions in language of court—Requests.

Approved in Mathieson Alkali Works v. Mathieson, 150 Fed. 251, upholding instructions relating to effect of incompetent work in action for services under contract; Armour v. Carlas, 142 Fed. 724, applying rule in action for personal injuries sustained by collision between two carriages at crossing; Mountain Copper Co. v. Van Buren, 133 Fed. 7, 66 C. C. A. 151, applying rule in action for wrongful death of servant.

Syl. 3 (VIII, 968). Care required to passenger on cattle train.

Approved in Indianapolis etc. Terminal Co. v. Lawson, 143 Fed. 837, where street-car company gave free use of cars to members of convention and passenger injured in collision, company is liable for want of ordinary care, and burden to show negligence is on plaintiff; Southern Ry. Co. v. Burgess, 143 Ala. 368, 42 So. 36, upholding instruction in action for injuries to passenger on freight train, that carrier owes to passenger duty to exercise highest degree of diligence known to very diligent persons engaged in same business; Southern Ry. Co. v. Cunningham, 123 Ga. 94, 50 S. E. 980, applying rule where passenger on mixed train was injured by bumping of train while standing on sidetrack; Radley v. Columbia Ry. Co., 44 Or. 336, 346, 75 Pac. 214, 217, one riding on engine of freight train which carried passengers, at direction of engineer, and injured by derailment of engine, is guilty of contributory negligence in riding on engine; Weaver v. Ann Arbor R. R. Co., 139 Mich. 600, 102 N. W. 1041, one riding on drover's pass is passenger for hire and his release of liability for damages on account of negligence of carrier is void; Mannon v. Camden etc. Ry. Co., 56 W. Va. 556, 49 S. E. 451, apply-

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ing rule when street-car passenger injured by jump when wires broke.

Syl. 6 (VIII, 969). Burden of proving negligence.

Approved in Indianapolis etc. Transit Co. v. Haines 66, 69 N. E. 188, following rule; The Nellie, 130 Fed. rule in action for injury to vessel from obstruction in side defendant's wharf; Southern Pac. Co. v. Tomlinso 33 Pac. 712, applying rule when one killed at rail The M. S. Huey Co. v. Johnston, 164 Ind. 497, 73 N. E. principle in action for injuries to factory operation machinery.

Syl. 10 (VIII, 971). Federal courts—State law as t

Approved in Liverpool etc. Ins. Co. v. N. & M. Frie Fed. 716, 66 C. C. A. 543, separation of jury after cause is not error.

Syl. 11 (VIII, 971). Following state procedure.

Approved in Swift v. Jones, 145 Fed. 491, circuit ju at law cannot order trial before special master auth and pass on issues of fact and report findings to cou v. Liverpool etc. Ins. Co., 141 Fed. 59, Missouri rule amended petition in compliance with erroneous orde parts of petition is waiver of error is not binding on dissenting opinion in Boston etc. R. Co. v. Gokey, 14 jority holding circuit court of appeals has no jurisdict tion challenging circuit court's jurisdiction.

Syl. 13 (VIII, 973). Review—New trials discretion

Approved in Clement v. Wilson, 135 Fed. 750, 68 C. lowing rule; Trafton v. United States, 147 Fed. 514, has no jurisdiction over motion for new trial in crimi after expiration of term at which sentence pronounce

93 U. S. 302, 23 L. 885, MARTIN v. HAZARD POWDE

Syl. 1 (VIII, 974). Finality of acceptance of app

Approved in Crown Cork etc. Co. v. Standard Stoppe 184, 69 C. C. A. 519, order fixing amount of bond on a terlocutory injunction order is not reviewable on a

93 U. S. 302-320, 23 L. 863, THE ATLAS.

Syl. 2 (VIII, 974). Damages recoverable for collisi

Approved in The Rickmers, 142 Fed. 309, holding ve collision not entitled to damages for permanent inju to repairs, where all known injuries repaired and expe depreciation of reason of collision.

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Syl. 7 (VIII, 975). Collision—Who bears inevitable loss.

Approved in Erie etc. Transp. Co. v. Erie R. Co., 142 Fed. 13, final decree in collision suit determining fault of collision and apportioning damages bars independent suit by one vessel against other to enforce contribution to cargo damage which was refused in first suit.

Syl. 12 (VIII, 976). Collision—Recovery by innocent cargo owner.

Approved in The Hamilton, 146 Fed. 728, when two vessels belonging to different owners collided through common fault, and both owners brought limitation of liability proceedings, damages against both vessels are recoverable by personal representatives of drowned passengers and crew of both vessels; The Eagle Point, 136 Fed. 1011, 1013, where two British vessels are in fault for collision on high seas, cargo owner may recover full damages from either vessel in American admiralty court.

93 U. S. 321-326, 23 L. 886, TALTY v. FREEDMAN'S S. & T. CO.

Syl. 4 (VIII, 978). Offer to pay not equivalent of tender.

Approved in Wilkins v. Redding, 70 Neb. 187, 97 N. W. 240, determining sufficiency of tender where debt secured by pledge.

93 U. S. 326-337, 23 L. 927, BRANT v. VIRGINIA COAL & IRON CO.

Syl. 1 (VIII, 979). Devise for life with power of disposal.

Approved in Anderson v. Messinger, 146 Fed. 938, construing estate of sons under will declaring that if either of two sons died without descendants survivor should take his estate, and making provision in case survivor died without descendants; Widows' Home v. Lippardt, 70 Ohio St. 290, 71 N. E. 774, will giving wife estate in fee simple with power to sell as she may see fit, gives widow power to convey fee of whole; Glore v. Scroggins, 124 Ga. 925, 53 S. E. 691, will devising property to wife for life to give to children as they became of age, created life estate in wife, with remainder to children.

Distinguished in Parks v. Robinson, 138 N. C. 273, 50 S. E. 650, will leaving property to wife for life and at her disposal, gave wife power to convey fee.

Syl. 3 (VIII, 980). Equitable estoppel—Conduct or declarations.

Approved in United States Fid. etc. Co. v. Ridgley, 70 Neb. 628, 97 N. W. 838, where employer's indemnity bond, issued on application of employee, contained provision that it should be binding on obligor unless signed by employee, it is not binding on obligor unless signed by employee.

Syl. 6 (VIII, 982). Estoppel with respect to realty.

Approved in Weidemann v. Springfield Breweries Co., 78 Conn. 665, 63 Atl. 164, where mortgagor assigned to mortgagee claim for in-

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surance money under agreement that money when paid should be applied to debt, which agreement subsequently modified so that money was to be applied to general indebtedness, mortgagee not estopped as against second mortgagee from applying money according to later agreement; Price v. Stratton, 45 Fla. 544, 33 So. 647, denying right to assert estoppel against dedication of street where records show street; Eastwood v. Standard Mines etc. Co., 11 Idaho, 202, 81 Pac. 383, where mine owner gave option to corporation and with his knowledge notice of ownership by corporation posted on mine, he cannot assert ownership as against miners' liens.

93 U. S. 337-340, 23 L. 930, THE JUANITA.

Syl. 2 (VIII, 983). Collision—Apportionment of damages—Both at fault.

Approved in The Hamilton, 146 Fed. 728, where two vessels belonging to different owners collide through common fault and both owners brought limitation proceedings, damages against both vessels are recoverable by representatives of passengers and crew of both vessels.

93 U. S. 341-344, 23 L. 901, SMITH v. GAINES.

Syl. 2 (VIII, 983). Summary proceedings against appeal sureties.

Approved in Empire etc. Min. Co. v. Hanley, 136 Fed. 103, 69 C. C. A. 87, where on affirmance on appeal, appellee filed in trial court motion to proceed containing notice to sureties on supersedeas bond that he would apply for summary decree on bond, court could render summary judgment against surety.

Syl. 3 (VIII, 982). Appeal—Conclusiveness of sureties—Executive return.

Approved in Flynn v. Kalamazoo Circuit Judge, 138 Mich. 128, 101 N. W. 222, amendment of sheriff's return as to matter of fact cannot be compelled by mandamus.

93 U. S. 344-347, 23 L. 949, COCKLE v. FLACK.

Syl. 1 (VIII, 984). Usury is for jury.

Approved in Waxahachie Loan etc. Co. v. Turner, 32 Tex. Civ. 282, 74 S. W. 792, holding, in action for penalty for usury on loans accompanied by cotton contracts, evidence showed cotton contracts not genuine but mere cover for usury.

93 U. S. 347-351, 23 L. 923, WISWALL v. CAMPBELL.

Syl. 1 (VIII, 985). Review of bankruptcy court's appellate judgment.

Distinguished in In re Weisen, 135 Fed. 443, in proceedings to compel bankrupt to pay money alleged to be still in his hands, stenographer's notes of bankrupt's testimony at creditor's meeting is admissible but testimony of other witnesses is not.

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Syl. 3 (VIII, 985). Bankruptcy—Creditor's proceedings to prove demands.

Approved in In re T. E. Hill Co., 148 Fed. 833, defects in citation and bond in bankruptcy appeal not being jurisdictional, they are curable after time limited for appeal; In re Francis, 136 Fed. 913, under Bankr. Act, § 2, subd. 3, where indebtedness of bankrupts created by fraud, and two had absconded and other was in jail, appointment of receiver before adjudication, without notice to imprisoned one, is valid.

Syl. 4 (VIII, 986). Bankruptcy—Speedy distribution.

Approved in Clendening v. Red River etc. Bank, 12 N. D. 60, 94 N. W. 904, in action by bankruptcy trustee to recover preferences, testimony of referee to effect that he did not adjudicate on question of right of defendant to retain items is inadmissible as contradicting order allowing defendant's claim.

93 U. S. 352-355, 23 L. 950, COWDREY v. GALVESTON ETC. R. R. CO.

Syl. 3 (VIII, 987). Receivers—Allowance of counsel fees.

Approved in Butler v. Conwell, 14 Wyo. 172, 82 Pac. 951, where creditors of insolvent consented to complainant's employment as their attorney to recover for their benefit funds belonging to insolvent, complainant entitled to preferred claim on fund for value of services whether fund recovered before or after appointment of receiver.

93 U. S. 366-379, 23 L. 907, COHN v. UNITED STATES CORSET CO.

Syl. 1 (VIII, 989). Patents—Prior public use.

Approved in Comptograph Co. v. Universal etc. Mach. Co., 142 Fed. 543, where inventor of computing machine took model to Census Bureau, where it was used for week to test its efficiency and several years later he obtained patent, patent valid; Victor Talking Mach. Co. v. American Graph. Co., 140 Fed. 866, Berliner patent No. 534,543, for improvements in talking machines not invalidated by prior public use; Pettibone v. Pennsylvania Steel Co., 133 Fed. 737, applying rule where foreign patent claimed to have anticipated American patent.

93 U. S. 379-387, 23 L. 920, DODGE v. FREEDMAN'S SAVINGS & TRUST CO.

Syl. 2 (VIII, 990). Declarations of possession of land.

Approved in Phillips v. Laughlin, 99 Me. 36, 105 Am. St. Rep. 253, 58 Atl. 68, declarations by predecessor in title of party to action involving title, as to invalidity of deed, are inadmissible.

Syl. 4 (VIII, 991). Payment by stranger is purchase of note.

Approved in Sturgis v. Baker, 43 Or. 243, 72 Pac. 746, where note sent to bank for collection was paid after maturity by cashier who

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was not liable thereon, transaction is purchase by cashier and not payment.

93 U. S. 387-392, 23 L. 931, CALLANAN v. HURLEY.

Syl. 1 (VIII, 991). Tax deed conclusive of regularity of sale.

Approved in O'Keefe v. Dillenbeck, 15 Okl. 444, 83 Pac. 542, where purchaser under delinquent tax deed valid on face has taken possession, former owner cannot avoid deed unless action brought within one year after recording of deed.

93 U. S. 424-429, 23 L. 964, OSTERBERG v. UNION TRUST CO. OF NEW YORK.

Syl. 2 (VIII, 996). Tax lien prior to execution sale.

Approved in Tinsley v. Atlantic Mines Co., 20 Colo. App. 63, 77 Pac. 13, where on foreclosure of mortgage, one made defendant under allegation that he claimed interest subject to the mortgage, disclaimed, saying he claimed under tax lien, he could not be compelled to litigate title in such action; Hadley v. Hadley, 114 Tenn. 174, 87 S. W. 254, upholding Acts 1897, pp. 5, 19, §§ 4, 27, changing tax system, re-enacted in 1899, 1901 and 1903, under which lien for taxes assessed to life tenant attaches to interest of remainderman; Richmond v. Williams, 102 Va. 741, 47 S. E. 846, creditors secured by trust deed are not owners of land, within Acts 1891-92, p. 505, providing notice to owners before improvement assessments levied.

93 U. S. 465-486, 23 L. 941, WIGGINS v. PEOPLE ETC. IN UTAH.

Syl. 3 (VIII, 1000). Homicide—Threats of decedent.

Approved in Lawson v. Territory, 8 Okl. 3, 56 Pac. 699, where in prosecution for murder question as to who was aggressor was in issue, it is error to refuse continuance on account of absence of witness who would testify that decedent had threatened to kill defendant.

93 U. S. 486-502, 23 L. 952, SMITH v. GOODYEAR DENTAL ETC. CO.

Syl. 2 (VIII, 1002). Patents—General use of process.

Approved in Bryce Bros. Co. v. Seneca Glass Co., 140 Fed. 171, upholding Schrader patent No. 592,920, for engraving machine for etching glassware; Thompson-Houston El. Co. v. Ohio Brass Co., 130 Fed. 547, upholding Van Depoele patents Nos. 393,278 and 396,313, for trolley crossings or switches for overhead electric conductors.

Syl. 3 (VIII, 1003). Patents—Substitution of materials.

Approved in New York Belting etc. Co. v. Sierer, 149 Fed. 770, Furness & Watts patent No. 527,961, for tile floor, is void for lack of invention; Keasbey etc. Mfg. Co. v. Philip Carey Mfg. Co., 139 Fed. 577, upholding Hanmore patent No. 545,843, for nonconducting covering for steam pipes; General Electric Co. v. Yost Elec. Mfg. Co., 139 Fed. 570, holding void Painter patent No. 718,378, for in-

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ating lining for lamp sockets; Imperial Bottle Cap etc. Co. v. own Cork etc. Co., 139 Fed. 322, holding Painter patent No. 8,258, for bottle-stopper, not anticipated; Rumford Chem. Wks. v. w York etc. Co., 134 Fed. 388, 67 C. C. A. 367, upholding Catlin tent No. 474,811, for baking-powder.

Syl. 5 (VIII, 10053). English patents date from when.

Approved in Columbus Chain Co. v. Standard Chain Co., 148 Fed. 0, holding Carroll patent No. 620,826, for device for regulating nensions of chain links anticipated by Goerke's Swiss patent.

Syl. 7 (VIII, 1005). Second petition for patent.

Approved in Hayes-Young Tin Plate Co. v. St. Louis Transit Co., 7 Fed. 82, 83, 70 C. C. A. 1, holding delay causing abandonment application not unavoidable.

U. S. 514-527, 23 L. 938, WHITE v. LUNNIG.

Syl. 1 (VIII, 1006). Boundaries—Descriptions in deeds.

Distinguished in Talley v. Schlatitz, 180 Mo. 238, 79 S. W. 163, ere in ejectment defendant relied on tax deed which failed to cribe land involved, evidence as to intention of sheriff in making d, for purpose of showing that he intended to describe land in-ved, is inadmissible.

Syl. 3 (VIII, 1007). Boundaries—Monuments control courses.

Approved in Security Land etc. Co. v. Burns, 193 U. S. 179, 48 671, 24 Sup. Ct. 425, courses and distances set forth in official t and referred to in patents which show alleged meander line of e as one boundary control as against actual boundary of lake, ere survey grossly fraudulent; Alaska Gold Mining Co. v. Bar-dge, 1 Alaska, 321, 325, rejecting field-notes in construing mining ent.

Syl. 4 (VIII, 1007). Boundaries—Monuments inconsistent with ls.

Approved in Reese v. Wright, 98 Md. 281, 56 Atl. 978, in suit to oin nuisance, incorporation of allegation in bill that mistake ex-d in defendant's deed as to description of alley in which nuisance s maintained was not fatal on demurrer where title to property l alleys admitted.

U. S. 527-548, 23 L. 868, HOME INS. CO. v. BALTIMORE WARE-HOUSE CO.

Syl. 1 (VIII, 1007). Construction of insurance policies.

Approved in American Cer. Co. v. Western Assur. Co., 148 Fed. where policy insured A, loss payable to B as its interest might ear, A was insured.

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Syl. 2 (VIII, 1008). Warehousemen insure in own names.

Approved in Home Ins. Co. v. Koob, 113 Ky. 369, 68 S. W. 455, 101 Am. St. Rep. 354, 58 L. R. A. 58, misrepresentation by insured as to amount due on mortgage was not material where there was no considerable difference between true balance and representation.

Syl. 4 (VIII, 1009). Policy to warehouse covers what.

Approved in Johnston v. Charles Abresch Co., 123 Wis. 135, 136, 107 Am. St. Rep. 995, 101 N. W. 397, policy on all stock of goods and materials belonging to insured or held by him in trust or storage, insured against loss to any property held in trust and not merely insured's interest therein.

Syl. 6 (VIII, 1009). Insurance—Admissibility of adjustments.

Approved in State v. Nevada etc. R. R. Co., 28 Nev. 209, 81 Pac. 103, on issue as to earning capacity of railroad for taxing purposes, it is error to permit expert who had examined books to give opinion as to what items should be properly charged to operation expenses and what excluded.

Syl. 7 (VIII, 1009). Admission of irrelevant evidence not reversible error.

Approved in Brown v. United States, 142 Fed. 4, applying rule in criminal prosecution.

Syl. 8 (VIII, 1010). Insurance—Admission of offer of compromise.

Approved in dissenting opinion in Misner v. Strong, 181 N. Y. 177, 73 N. E. 970, in action to establish ownership of undivided interest in vessel and for accounting of earnings, admission of offer of compromise by defendant is harmless where defendant testified to same thing.

93 U. S. 548-558, 23 L. 983, STANTON v. EMBREY.

Syl. 2 (VIII, 1010). Pendency of prior suit in other jurisdiction.

Approved in Burk v. McCaffrey, 136 Fed. 696, and German Savings & L. Soc. v. Tull, 136 Fed. 12, 69 C. C. A. 1, both following rule; Guardian Trust Co. v. Kansas City etc. Ry. Co., 146 Fed. 340, action against purchaser at foreclosure on its liability to pay debt of mortgagor under reorganization scheme is not bar to determination by court rendering foreclosure decree of priority of other liens to mortgage liens; Mankato v. Barber Asphalt Pav. Co., 142 Fed. 340, defendant in state court not concluded by state judgment rendered after he has recovered judgment in federal court; Slaughter v. Mallet Land etc. Co., 141 Fed. 290, pendency of state action to try title and to remove cloud from title is not ground for abatement of subsequent federal suit to quiet title; Franklin v. Conrad-Stanford Co., 137 Fed. 744, 70 C. C. A. 171, state suit to foreclose mortgage securing note in which property sold and proceeds applied on

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amount due on note, but in which no formal deficiency judgment rendered, is not bar to federal action on note for amount of deficiency; Barber Asphalt Pav. Co. v. Morris, 132 Fed. 948, 67 L. R. A. 761, 66 C. C. A. 55, where one having claim against city sued in federal court, it is error to stay proceedings pending determination of state court appeals under charter providing for such appeals and prohibiting payment of claims pending appeals; Guaranty Trust Co. v. North Chicago St. R. Co., 130 Fed. 807, 65 C. C. A. 65, pendency of federal creditor's suit against street railway for whom receiver appointed but whose road is operated by receiver of lessee does not authorize enjoining of state suit by stockholders to enjoin delivery of amended lease; Lake County v. Schradsky, 31 Colo. 184, 71 Pac. 1106, pendency of writ of error to United States supreme court to review dismissal for want of jurisdiction in circuit court, where no supersedeas granted, does not bar state action on same cause of action; National Tube Co. v. Smith, 57 W. Va. 216, 110 Am. St. Rep. 776, 50 S. E. 719, 1 L. R. A. (N. S.) 195, refusing to restrain prosecution of garnishment in justice court action for debt where in another state injunction enjoining garnishee from paying money under judgment of justice is pending.

Syl. 5 (VIII, 1013). Attorney—Contingent contract—Government claim.

Approved in Whinery v. Brown, 36 Ind. App. 282, 75 N. E. 607, upholding contract between attorney and client for contingent fee dependent on amount of recovery; Field v. Sammis, 12 N. M. 48, 73 Pac. 621, arguendo.

93 U. S. 575-586, 23 L. 978, THE IDAHO.

Syl. 1 (VIII, 1016). Excuse for bailee's nondelivery.

Approved in National Newark Banking Co. v. Delaware etc. R. R. Co., 70 N. J. L. 779, 103 Am. St. Rep. 825, 58 Atl. 312, 66 L. R. A. 595, applying rule where consignee sold goods in advance of their arrival; Wheeler & Wilson Mfg. Co. v. Brookfield, 70 N. J. L. 707, 58 Atl. 354, under state statute warehouseman delivering goods to receipt holder after claim by one purporting to be owner, is not liable in trover to purported owner.

Syl. 3 (VIII, 1017). Carriers—Bailee's duty to restore property.

Approved in Sweeney v. Waterhouse, 39 Wash. 514, 81 Pac. 1006, where one after shipping goods consigned to himself sells goods in transit and surrenders and assigns bill of lading to purchaser, who receives part of goods, carrier not estopped, in action by shipper for failure to deliver balance, to deny shipper's title.

Syl. 4 (VIII, 1017). Bailment—Title in third person.

See 105 Am. St. Rep. 356, note.

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Syl. 6 (VIII, 1017). Bill of lading represents ownership.

Approved in Watkins Nat. Bank v. Cleveland etc. Ry. Co., 117 Mo. App. 254, 93 S. W. 846, carrier's liability to one to whom bills of lading have been negotiated, for issuing same before it had received freight in violation of Rev. St. 1899, § 5052, is not changed by its subsequent receipt thereof.

Syl. 9 (VIII, 1018). Rights of willful confuser of goods.

Approved in McKnight v. United States, 130 Fed. 666, 65 C. C. A. 37, doctrine of confusion of goods does not apply to cattle. See 101 Am. St. Rep. 915, note.

93 U. S. 586-589, 23 L. 982, UNITED STATES v. THOMPSON.

Syl. 1 (VIII, 1018). Rights of government sued in state court.

Approved in United States v. Choctaw etc. R. R. Co., 3 Okl. 454, 41 Pac. 746, in action in which name of United States authorized to be used for private parties as relators for protection of private interests, such parties not exempt from security for costs on writ of error; dissenting opinion in State v. Marsh, 134 N. C. 192, 47 S. E. 9, 67 L. R. A. 179, majority holding where, on appeal from conviction for rape, judgment reversed for want of material allegation in indictment as shown in record, but such allegation omitted from record by misprision of clerk, supreme court could, after term at which reversal had, issue certiorari to correct record and reset case.

Syl. 2 (VIII, 1019). Supreme court—Review of state decisions.

See 97 Am. St. Rep. 720, note.

93 U. S. 595-599, 23 L. 814, WEST WISCONSIN R. R. CO. v. SUPERVISORS.

Syl. 1 (VIII, 1019). Tax exemptions are repealable.

Approved in Baltimore etc. Ry. Co. v. Wicomico Co., 103 Md. 290, 292, 63 Atl. 683, general assessment law of 1896, declaring property of all railroads liable to municipal taxation valid as to corporation formed under Code 1888, §§ 187, 188, by purchaser at foreclosure of railroad having tax immunity.

93 U. S. 605-612, 23 L. 959, DESMARE v. UNITED STATES.

Syl. 2 (VIII, 1022). Domicile continues till other acquired.

Approved in Flynn v. Fidelity & Casualty Co., 145 Fed. 266, permitting amendment of removal petition after record on removal filed, by alleging directly citizenship of plaintiff's assignor, where record already shows such citizenship in legal effect.

93 U. S. 619-625, 23 L. 989, SUPERVISORS v. LACKAWANNA.

Syl. 1 (VIII, 1023). Implications in contracts.

Approved in Brewster v. Lanyon Zinc Co., 140 Fed. 812, construing covenant in oil lease as condition.

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Syl. 2 (VIII, 1023). Statutes—Repeals by implication.

Approved in dissenting opinion in Allen v. Reed, 10 Okl. 155, 63 Pac. 877, majority holding void Stat. 1893, c. 23, relating to change of county seats.

93 U. S. 631-634, 23 L. 993, DONALDSON v. FARWELL.

Syl. 1 (VIII, 1023). Fraud—Inducement to give credit—Insolvency.

Approved in Gregg v. Metropolitan Trust Co., 197 U. S. 190, 49 L. 720, 25 Sup. Ct. 415, claim for ties necessary to preservation of railroad furnished within six months of receivership not preferred over lien of mortgage recorded prior to tie contract; In re Levi, 148 Fed. 655, seller cannot rescind sale though at time of delivery vendee had reasonable ground to believe he could not pay and did not intend to pay, though no such belief or intent inferable as of date of sale; In re Woollcott, 140 Fed. 460, personal property exemption allowed debtor by state law cannot be claimed by bankrupt out of goods which he obtained by falsely representing himself as agent; Joyner v. Earley, 139 N. C. 50, 51 S. E. 779, where, in replevin, plaintiff simply alleged ownership and wrongful detention, but proved defendant obtained possession by false representations, complaint amendable by allegations of fraud and deceit.

Syl. 2 (VIII, 1025). Bankruptcy—Fraud—Title of assignee.

Approved in Hewit v. Berlin Machine Works, 194 U. S. 303, 48 L. 988, 24 Sup. Ct. 690, bankruptcy trustee is not subsequent purchaser in good faith, within N. Y. Laws 1897, c. 418, § 112, avoiding conditional sales; Smith v. Au Gres Twp., 150 Fed. 264, holding witness may testify after bankrupt's death to admissions made by bankrupt concerning his estate while he was yet owner thereof; In re Reynolds, 133 Fed. 589, where, after adjudication, property of bankrupt taken by mortgagee under chattel mortgage given more than four months prior to petition, and trustee sued mortgagee in state court to recover value of property, he cannot thereafter bring summary proceedings in bankruptcy court to recover property.

93 U. S. 634-641, 23 L. 995, HEYDENFELDT v. DANEY ETC. MINING CO.

Syl. 1 (VIII, 1026). Liberal construction of statutes.

Approved in United States v. Raisch, 144 Fed. 488, Rev. St., § 5424, prohibits felonious making of certificate of naturalization by one other than applicant or his witness; Brown v. Woods, 2 Okl. 604, 39 Pac. 474, attorney suspended in district court of county in which he has been elected county attorney cannot perform duties while suspension in force.

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Syl. 3 (VIII, 1026). School land grants in praesenti.

Approved in State v. Jennings, 47 Fla. 319, 35 So. 992, act of Congress of March 3, 1845, granting school lands in Florida being grant in praesenti, grant immediately attached when by survey a sixteenth section or fractional part thereof exists in any township, by relation to date of grant.

93 U. S. 644-663, 23 L. 998, TAMELING v. UNITED STATES FREEHOLD ETC. CO.

Syl. 2 (VIII, 1028). Review of confirmation of Mexican grants.

Explained in Catron v. Laughlin, 11 N. M. 624, 627, 631, 72 Pac. 29, 30, 32, construing confirmation of Mexican grant.

Syl. 4 (VIII, 1029). Statute confirming land claims.

Explained in Catron v. Laughlin, 11 N. M. 626, 72 Pac. 30, construing confirmation of Mexican grant.

93 U. S. 664-674, 23 L. 1003, HERVEY v. RHODE ISLAND LOCOMOTIVE WORKS.

Syl. 1 (VIII, 1029). States regulate property transfers.

Approved in Reed v. Munn, 148 Fed. 748, where claimants of conflicting mining locations, in order to adjust controversy, conveyed to trustee, equitable interest of owners under agreement was subject to execution; In re Greene, 134 Fed. 138, 139, where chattel mortgage was recorded in town where property located, it was good as to creditors though not filed in state where both mortgagor and mortgagee resided; In re Smith, 132 Fed. 303, goods in possession of bankrupt, purchased by him for resale under contract, reserving title to seller until payment, condition being void as to creditors without notice because not recorded as required by statute, pass to bankruptcy trustee; In re Brannock, 131 Fed. 820, recordation in Nebraska where mortgagor resides is not constructive notice to creditors where property situated in Iowa, when mortgage made; Smead v. Chandler, 71 Ark. 511, 76 S. W. 1068, 65 L. R. A. 353, trust deed executed in Missouri by insolvent Missouri corporation to secure certain creditors is not void in Arkansas; Cooper v. Philadelphia Worsted Co. (Lees v. Harding etc. Co.), 68 N. J. Eq. 629, 60 Atl. 355, where contract with reference to title of chattels situated in another state is made in that state between resident thereof and New Jersey corporation, to be there performed, law of that state determines effect of contract; State v. Fidelity etc. Co., 35 Tex. Civ. 220, 80 S. W. 547, municipal securities deposited with state treasurer by foreign corporation in accordance with statute requiring such deposit in order to do business in state are taxable by state.

Syl. 3 (VIII, 1030). Chattel mortgages—Law governing.

Distinguished in Studebaker Bros. Co. v. Mau, 14 Wyo. 78, 82 Pac. 5, where vendee in conditional sale which is lien removes property

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sold to another state, without knowledge of vendor, latter may enforce lien in other state against subsequent bona fide purchasers, without complying with registration laws of such state.

Syl. 4 (VIII, 1031). Purpose of contract controls.

Approved in Unitype Co. v. Long, 143 Fed. 317, contract for lease of machine for term for total rental payable in installments, with option to lessee to extend term at same rental or buy machine for certain amount less rentals paid, is conditional sale; In re Tice, 139 Fed. 53, where machinery delivered to bankrupt under contract that he should pay certain installment sums as rental and on final payment he was to get bill of sale, but there was no provision for return except for default in payment, there was conditional sale and not bailment; In re Sheets Printing & Mfg. Co., 136 Fed. 991, contract leasing machine for term at rental payable monthly and giving lessee option to purchase during term for certain sum less amount paid in rental, is conditional sale; Great Western Mfg. Co. v. Bathgate, 15 Okl. 102, 79 Pac. 907, holding real estate mortgage superior to vendor's lien under conditional sale of machinery attached to premises where sale not recorded till after mortgage; Yarborough v. Hughes, 139 N. C. 203, 51 S. E. 905, arguendo.

XCIV UNITED STATES.

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94 U. S. 4-6, 24 L. 34, HOADLEY v. SAN FRANCISCO.

Syl. 4 (IX, 7). Removal—Action under city ordinance.

Approved in Bowden v. San Francisco, 199 U. S. 600, 50 L. 328, 26 Sup. Ct. 748, following rule.

Distinguished in McCune v. Essig, 199 U. S. 388, 50 L. 240, 26 Sup. Ct. 78, upholding removal of suit by daughter of deceased homesteader to establish title under state laws as against widow to whom patent issued under Rev. St., § 2291.

94 U. S. 6-11, 24 L. 40, PIKE v. EVANS.

Syl. 2 (IX, 8). Judicial sales—Seizure—Five years' possession.

Approved in Nagel v. Clement, 113 La. 196, 36 So. 936, following rule; Landry v. Laplos, 113 La. 701, 37 So. 607, irregularity in not making succession sale at proper place is cured by five years' prescription.

94 U. S. 14-22, 24 L. 49, EX PARTE CUTTING.

Syl. 4 (IX, 9). Appeal—Order refusing intervention.

Approved in Land Title etc. Co. v. Tatnall, 132 Fed. 307, 65 C. C. A. 671, following rule.

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94 U. S. 22-28, 24 L. 51, HUMES v. SCRUGGS.

Syl. 1 (IX, 9). Replication denies what.

Approved in Pinney v. Pinney, 46 Fla. 572, 35 So. 100, following rule; Robinson v. American Car etc. Co., 132 Fed. 166, answer specifically traversing allegations of bill for infringement of patent and also containing general denial puts in issue all material allegations of bill, though as to one allegation it is not technically responsive;

94 U. S. 29-50, 24 L. 54, UTLEY v. DONALDSON.

Syl. 1 (IX, II). Telegrams constituting contracts.

Approved in 110 Am. St. Rep. 746, 754, note.

Syl. 2 (IX, 11). Contracts construed to operate fairly.

Approved in dissenting opinion in Atlas Red. Co. v. New Zealand Ins. Co., 138 Fed. 513, majority construing insurance policy containing "loss payable" clause as not permitting encumbrance of property.

94 U. S. 50-51, 23 L. 64, DOYLE v. WISCONSIN.

Syl. 1 (IX, 11). Amended act used in construing amendment.

Approved in Schmidt v. United States, 133 Fed. 260, 66 C. C. A. 389, under Comp. St. Supp. 1903, p. 191, and Comp. St. 1901, p. 3654, one knowingly swearing falsely to material fact in naturalization proceedings in state court is punishable for perjury in federal court.

94 U. S. 53-69, 24 L. 65, UNITED STATES v. BOSTWICK.

Syl. 3 (IX, 12). Tenant cannot commit waste.

Approved in Brewster v. Lanyon Zinc Co., 140 Fed. 811, 812, construing covenant in oil lease as condition.

94 U. S. 76-86, 24 L. 42, STORM v. UNITED STATES.

Syl. 1 (IX, 14). Bill of exceptions necessary to review errors.

Approved in Cassatt v. Mitchell Coal & Coke Co., 150 Fed. 42, under Rev. St., § 724, party cannot be required to produce books and papers before trial.

Syl. 4 (IX, 15). Receipt of consideration as estoppel.

Approved in Underwood Typewriter Co. v. Century Realty Co., 118 Mo. App. 203, 94 S. W. 788, where lessor in lease prohibiting assignment thereof without his consent promised in writing to give consent on lessee procuring desirable tenant, promise was enforceable on procurement of acceptable tenant.

Syl. 5 (IX, 15). Sealed instrument needs no consideration.

Distinguished in American Agricultural Co. v. Kennedy, 103 Va. 179, 48 S. E. 871, contract by which plaintiff agrees to sell and defendant agrees to buy, without other consideration, and providing that plaintiff may cancel at any time, is void.

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94 U. S. 92-97, 24 L. 68, CONSOLIDATED FRUIT-JAR CO. V. WRIGHT.

Syl. 2 (IX, 16). Patents—Prior use.

Approved in Bradley v. Eccles, 138 Fed. 914, holding Hannan reissue, No. 11,260, for improvements in thill couplings, void for public use.

Syl. 4 (IX, 17). Estoppel by silence.

Approved in Eck v. Kutz, 132 Fed. 777, where complainant had complete conception of device which he reduced to practical form, he did not abandon same, because for business reasons he let matter rest for over three years.

94 U. S. 97, 98, 24 L. 32, SMITH v. UNITED STATES.

Syl. 1 (IX, 17). Dismissal of appeal—Accused a fugitive.

Approved in State v. Scott, 70 Kan. 693, 79 Pac. 126, dismissing appeal where after appeal defendant became fugitive.

94 U. S. 98-100, 24 L. 70, OMAHA v. HAMMOND.

Syl. 1 (IX, 17). Municipality—Work done under officer.

Approved in Norcross v. Wyman, 187 Mass. 28, 72 N. E. 348, applying principle where building contract provided that decision of architect as to specifications shall be final and binding.

Distinguished in Drainage Com. v. National Contracting Co., 136 Fed. 794, under Acts La. 1896, p. 162, No. 114, relating to drainage, neither drainage commission nor its engineer could consent to substitution of cheaper material for that specified in contract.

94 U. S. 104-110, 24 L. 46, COMMISSIONERS OF DOUGLAS CO. v. BOLLES.

Syl. 3 (IX, 19). Bonds—Purchaser from bona fide purchaser.

Approved in Board of Commrs. v. Tollman, 145 Fed. 763, applying rule to assignees of county aid bonds issued to railroad before decision construing constitutional provision alleged to have been violated by statute under which bonds issued.

94 U. S. 111, 24 L. 31, HURST v. HOLLINGSWORTH.

Syl. 1 (IX, 20). Taking both appeal and writ of error.

Approved in United States v. Hung Chang, 134 Fed. 20, 67 C. C. A. 93, appeal is proper proceeding for review by circuit court of appeals of judgment of district court on appeal from order of commissioner for deportation of Chinaman.

94 U. S. 113-154, 24 L. 77, MUNN v. ILLINOIS.

Syl. 1 (IX, 23). Statutes presumed valid.

Approved in Highland Boy Gold Min. Co. v. Strickley, 28 Utah, 231, 107 Am. St. Rep. 711, 78 Pac. 297, upholding Sess. Laws 1901, p. 19,

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c. 25, authorizing condemnation for construction and operation of tramways for mine development.

Syl. 2 (IX, 23). Use of property so as not to injure others.

Approved in State v. Durein, 70 Kan. 31, 80 Pac. 993, state constitutional amendment prohibiting manufacture and sale of liquor, except for medicinal and scientific use, did not abridge legislature's power to prohibit liquor traffic.

Syl. 5 (IX, 25). Regulation of property devoted to public use.

Approved in Weems Steamboat Co. v. People's Steamboat Co., 141 Fed. 456, 458, 459, single carrier by leasing cannot exclude other carriers from wharf built on navigable river at terminus of public highway in country where it is only means by which public can reach river; Denninger v. Recorder's Court, 145 Cal. 641, 79 Pac. 364, upholding ordinance fixing maximum gas rate, and making it misdemeanor to charge more; Chicago v. Cicero, 210 Ill. 298, 71 N. E. 359, upholding Hurd's Rev. St. 1901, p. 347, § 26, relating to organization of sanitary districts; Western Union Tel. Co. v. State, 165 Ind. 492, 76 N. E. 103, where telegraph company in connection with other business buys continuous market quotations and sells same to others, for such time as to make quotations necessary to business, it must supply them to all on equal terms; United States Express Co. v. State, 164 Ind. 211, 73 N. E. 106, upholding Burns' Ann. St. 1901, § 3312a, requiring express companies to deliver parcels to consignees in cities having specified population; Adams Express Co. v. State, 161 Ind. 346, 67 N. E. 1039, upholding Acts 1901, p. 149, c. 93, prohibiting unjust discrimination by express company against any other company engaged in same business; Bedford etc. Stone Co. v. Oman, 115 Ky. 379, 73 S. W. 1040, railroad managing switch from its line to appellant's quarry cannot refuse to transport freight belonging to appellee, owner of nearby quarry; Brown v. Gerald, 100 Me. 372, 109 Am. St. Rep. 526, 61 Atl. 794, 70 L. R. A. 472, electric power company granted right of eminent domain has no power of eminent domain for purpose of supplying power for manufacturing purposes; Ex parte Kair, 28 Nev. 147, 80 Pac. 466, upholding Stat. 1903, p. 33, imposing penalty on anyone working more than eight hours a day in any mine or ore-reduction mill; New York Cement Co. v. Consolidated Cement Co., 178 N. Y. 176, 70 N. E. 453, holding part of canal conveyed under Laws 1899, p. 958, c. 469, which was continued in use after abandonment of balance was public highway; Corporation Com. v. Atlantic Coast Line R. Co. (Railroad Connection Case), 137 N. C. 15, 49 S. E. 196, upholding Acts 1899, pp. 291, 304, §§ 1, 21, giving corporation commission power to require railroad to make reasonable connection with trains of other roads; Hilton Lumber Co. v. Atlantic Coast Line R. Co. (Railroad Discrimination Case), 136 N. C. 483, 48 S. E. 814, under Laws 1899, p. 301, c. 164, § 13, railroad carrying raw materials to factories cannot charge factory which agrees to ship manufactured product over same road less than it charges factory refusing to so agree; Webster v. State, 110 Tenn.

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505, 82 S. W. 182, upholding act prohibiting sale of liquor within four miles of institutions of learning, though sales by manufacturers in wholesale packages exempted; State v. White River Power Co., 39 Wash. 667, 82 Pac. 152, 2 L. R. A. (N. S.) 842, taking land by power company which has no power to enter cities is taking for private use; dissenting opinion in Wright v. Hart, 182 N. Y. 350, 75 N. E. 411, 2 L. R. A. (N. S.) 338, majority holding void Laws 1902, p. 1249, c. 528, making sales of stock of goods in bulk fraudulent and void as to creditors unless certain conditions complied with. See 102 Am. St. Rep. 819, note,

Distinguished in Louisville etc. R. R. Co. v. West Coast Naval etc. Co., 198 U. S. 500, 49 L. 1142, 25 Sup. Ct. 745, wharf in city harbor at foot of public street, built by railroad for purpose of facilitating transportation of through freight, is not public wharf of which shipper can demand use on payment of hire.

Syl. 6 (IX, 43). Regulation of compensation—Property devoted to public use.

Approved in Raritan River R. R. Co. v. Traction Co., 70 N. J. L. 744, 58 Atl. 336, upholding agreement between railroad and competitor that during limited period former will not reduce present rates unless required by law; Jacquelin v. Erie R. R. Co., 69 N. J. Eq. 444, 445, 61 Atl. 23, denying preliminary injunction to prevent discontinuance of railroad station.

Syl. 7 (IX, 49). Propriety of legislative interference is for legislature.

Distinguished in Dobbins v. Los Angeles, 195 U. S. 235, 237, 49 L. 175, 176, 25 Sup. Ct. 18, holding void city ordinance narrowing limits within which gasworks may be erected so as to include property purchased for that purpose, where change not demanded by public welfare; In re Smith, 143 Cal. 371, 77 Pac. 181, holding void county ordinance making it misdemeanor to maintain gasworks within certain district which was very sparcely settled and no house existed within three hundred yards of existing gas plant; State v. Marble, 72 Ohio St. 33, 106 Am. St. Rep. 570, 73 N. E. 1066, 70 L. R. A. 835, upholding Act of 1902, regulating practice of medicine, as applied to Christian Science, is valid exercise of police power.

Syl. 8 (IX, 49). Vested rights in rule of law.

Approved in Cottonwood Lumber Co. v. Hardin, 78 Ark. 98, 92 S. W. 1120, upholding act providing that unimproved, uninclosed lands deemed in possession of one paying taxes for seven years under color of title; Kenneweg v. County Commrs. of Allegany Co., 102 Md. 127, 62 Atl. 252, upholding Acts 1904, p. 870, c. 508, § 105, prescribing time for holding primaries by different parties.

Syl. 9 (IX, 50). Commerce—Regulation of warehouses.

Approved in Globe Elevator Co. v. Andrew, 144 Fed. 879, Laws Wis. Sp. Sess. 1905, p. 19, c. 12, relating to inspection and grading of grain

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at Superior and prohibiting sales according to Minnesota grades, is void as to interstate commerce; Orient Ins. Co. v. Northern Pacific Ry. Co., 31 Mont. 510, 78 Pac. 1038, under Civ. Code, § 393, subd. 25, corporation may be formed for warehousing goods for shipment; People v. Miller, 178 N. Y. 198, 204, 205, 70 N. E. 473, 476, where entire business of domestic corporation consists of transportation of goods from outside states into state and vice versa, is not subject to franchise tax.

Distinguished in Hart v. State, 100 Md. 608, 612, 60 Atl. 461, 462, Acts 1904, p. 186, c. 109, requiring carriers to provide separate coaches for whites and negroes and making it offense for passenger to refuse to occupy car assigned, is void as to interstate passengers.

Syl. 13 (IX, 55). Scope of guaranty in fourteenth amendment.

Approved in City of Iola v. Birnbaum, 71 Kan. 603, 81 Pac. 199, Gen. St. 1901, § 2501, providing for recovery of damages against cities on account of acts of mobs, applies to all bodily injuries.

(IX, 21.) Miscellaneous. Cited in Ex parte Berger, 193 Mo. 27, 90 S. W. 761, 3 L. R. A. (N. S.) 530, upholding Rev. St. 1899, § 2358, making it misdemeanor to receive greater interest than two per cent per month.

94 U. S. 155-164, 24 L. 94, CHICAGO ETC. R. R. CO. v. IOWA.

Syl. 5 (IX, 57). Commerce—State railroad rate regulation.

Distinguished in Hart v. State, 100 Md. 608, 612, 60 Atl. 461, 462, Acts 1904, p. 186, c. 109, requiring carriers to provide separate coaches for whites and negroes and making it offense for passenger to refuse to occupy car assigned, is void as to interstate passengers.

Syl. 7 (IX, 58). Classification of railroads—Uniformity.

Approved in Houston etc. R. Co. v. Storey, 149 Fed. 504, Texas railroad commission, under statute, may fix different rates for different carriers; Lacy v. Armour Packing Co., 134 N. C. 573, 47 S. E. 55, upholding Laws 1903, p. 339, § 56, imposing license tax on packing-houses; Cincinnati St. Ry. Co. v. Horstman, 72 Ohio St. 109, 73 N. E. 1078, upholding amendatory act of April 22, 1896, known as Rodger's Law; State v. Fraternal Knights, 35 Wash. 345, 77 Pac. 503, upholding Laws 1901, p. 362, c. 174, § 12, requiring subsequently formed fraternal insurance societies to adopt mortuary assessment rates not lower than Fraternal Congress Mortality Table.

94 U. S. 164-178, 24 L. 97, PEIK v. NORTHWESTERN R. R. CO.

Syl. 4 (IX, 59). Commerce—State rate regulation.

Distinguished in Hart v. State, 100 Md. 608, 612, 60 Atl. 461, 462, Acts 1904, p. 186, c. 109, requiring carriers to provide separate coaches for whites and negroes and making it offense for passenger to refuse to occupy car assigned, is void as to interstate passengers.

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Syl. 6 (IX, 61). Reasonableness of rates is for legislature.

Approved in Raritan Riv. R. R. Co. v. Middlesex etc. Co., 70 N. J. L. 744, 58 Atl. 336, upholding agreement between railroad and competitor that during limited period former will not reduce present rates unless required by law.

94 U. S. 181-187, 24 L. 102, STONE v. WISCONSIN.

Syl. 3 (IX, 65). Following state statutory construction.

Approved in dissenting opinion in James v. Gray, 131 Fed. 414, 65 C. C. A. 385, majority holding loan by wife to husband from separate estate is provable against his bankrupt estate, irrespective of its enforceability under state law.

94 U. S. 187-202, 24 L. 34, DUNBAR v. MYERS.

Syl. 2 (IX, 66). Patents—Sufficiency of disclaimer.

Approved in Sample v. American Soda Fountain Co., 134 Fed. 403, disclaimer may be filed in patent office during pendency of infringement suit though case has been heard on appeal.

Syl. 5 (IX, 66). Matters disclaimed no part of invention.

Approved in Manhattan etc. Constr. Co. v. Helios-Upton Co., 135 Fed. 802, construing Baker patent No. 684,340, for regulator for arc-lamp circuit.

Syl. 10 (IX, 66). Patents—Substitution of materials.

Approved in Sloan Filter Co. v. Portland Gold Min. Co., 139 Fed. 26, holding void Sloan patent No. 587,874, for barrel filter for use in filtration of precious metal solutions.

Syl. 12 (IX, 67). Patents—Addition of equivalents.

Approved in Bullock Elec. Mfg. Co. v. General Elec. Co., 149 Fed. 419, holding Reist patent No. 508,637, for improvement in armature cores, void for want of invention; American Carriage Co. v. Wyeth, 139 Fed. 392, holding void Wyeth patent No. 400,381, for sleigh-runner for wheeled vehicle.

94 U. S. 207-214, 24 L. 112, ATLANTIC DELAINE CO. v. JAMES.

Syl. 1 (IX, 68). Cancellation of instruments—Fraud and injury.

Approved in Fowler v. Fowler, 135 Fed. 410, holding evidence insufficient to show complainant, in suit to set aside deed of her interest in brother's estate, induced to execute deed by fraudulent representations; Bush v. Prescott etc. Ry. Co., 76 Ark. 501, 89 S. W. 88, fact that party fraudulently induced to compromise cause of action might obtain relief by motion to reinstate action does not bar suit to cancel compromise; Seymour Water Co. v. Seymour, 163 Ind. 129, 70 N. E. 517, refusing to cancel contract between city and water company, whereby latter agreed to furnish certain pressure for fire protection and furnish water for domestic uses, for noncompliance with terms; Lynch v. United States, 13 Okl. 145, 73 Pac. 1097, United States can-

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not sue to cancel patent obtained by bribery and perjury solely for benefit of third party; Johnson v. Swanke, 128 Wis. 73, 107 N. W. 482, 5 L. R. A. (N. S.) 1048, refusing to cancel note or enjoin its transfer where it was given for purchase of horse, which purchase was induced by fraud.

94 U. S. 214-219, 24 L. 115, UNITED STATES v. SMITH.

Syl. 2 (IX, 69). Government's liability on contracts.

Approved in Mountain Copper Co. v. United States, 142 Fed. 629, refusing to enjoin operation of smelter at suit of government which owned neighboring land unfit for cultivation and sparsely wooded.

Syl. 3 (IX, 69). Conclusiveness of court of claims findings.

Approved in District of Columbia v. Barnes, 197 U. S. 150, 49 L. 700, 25 Sup. Ct. 401, following rule.

94 U. S. 225-238, 24 L. 72, CAMMEYER v. NEWTON.

Syl. 2 (IX, 71). Assignment of invention before patent.

Approved in In re Dann, 129 Fed. 497, bankrupt's incorporeal interest in invention pending application for patent does not pass to trustee under Bankr. Act, § 70a, cl. 5.

Syl. 7 (IX, 71). Infringement by government agent.

Approved in dissenting opinion in International Postal Supply Co. v. Bruce, 194 U. S. 608, 48 L. 1138, 24 Sup. Ct. 820, majority holding patentee for improvements in stamp-canceling machine cannot enjoin use by postmaster of infringing machines of which United States is lessee, during term of lease. See 108 Am. St. Rep. 836, note.

94 U. S. 238-245, 24 L. 118, INMAN STEAMSHIP CO. v. TINKER.

Syl. 1 (IX, 71). Commerce—State tonnage tax void.

Approved in Way v. New Jersey Steamboat Co., 133 Fed. 191, 192, holding void Laws N. Y. 1897, p. 701, § 63, compelling master, owner or consignee of vessel entering port to pay for services of harbormaster certain sum per ton per annum based on registered tonnage.

94 U. S. 246-248, 24 L. 122, FOSTER v. MASTER ETC. NEW ORLEANS.

Syl. 1 (IX, 72). Commerce—State law—Survey of hatches.

Approved in Territory v. Denver etc. R. R. Co., 12 N. M. 434, 78 Pac. 76, upholding act of 1901, prohibiting exportation of uninspected hides.

94 U. S. 258-260, 24 L. 153, UNITED STATES v. YOUNG.

Syl. 4 (IX, 75). Certiorari as auxiliary process.

Approved in Whitney v. Dick, 202 U. S. 139, 50 L. 966, 26 Sup. Ct. 584, circuit court of appeals cannot issue certiorari as original proceeding to review conviction in inferior federal court.

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94 U. S. 260-277, 24 L. 154, TOWN OF SOUTH OTTAWA v. PERKINS.

Syl. 1 (IX, 75). Statutes—Legislative journals showing passage.

Approved in Callison v. Brake, 129 Fed. 200, 63 C. C. A. 354, upholding Laws 1899, p. 114, c. 4722, relating to damages recoverable for wrongful death of minor child.

Syl. 3 (IX, 75). Passage of statutes.

Approved in Bray v. Williams, 137 N. C. 390, 49 S. E. 888, fact that defendant in action to recover penalty for failure to record licenses procured passage of statute releasing him from penalties on agreement that plaintiff in action should have no time to oppose it, does not estop defendant from pleading statute in defense.

Syl. 4 (IX, 76). Following state statutory construction.

Distinguished in Great Southern etc. Hotel Co. v. Jones, 193 U. S. 546, 48 L. 786, 24 Sup. Ct. 576, upholding Ohio Rev. St., §§ 3184-3185a, giving lien on property of owner to subcontractors, laborers and those furnishing materials for use by contractor in executing contract.

Syl. 6 (IX, 76). Statutes—Evidence of existence.

Approved in Rogers v. State, 72 Ark. 567, 82 S. W. 170, holding void anti-gambling act of 1901, as not having been passed according to constitution.

Syl. 7 (IX, 77). All bound to know law.

Approved in Sauer v. Gillett, 20 Colo. App. 371, 78 Pac. 1070, under Mills' Ann. St., § 4403, subd. 6, relating to town bonds for waterworks, bonds issued under ordinance which did not provide for levy are void in hands of bona fide purchaser irrespective of recitals as to issuance in compliance with law.

94 U. S. 278-288, 24 L. 59, COMMISSIONERS MARION CO. v. CLARK.

Syl. 1 (IX, 78). County bonds—Law in force at issuance.

Approved in dissenting opinion in Wright v. East Riverside Irr. Dist., 138 Fed. 324, majority holding where irrigation district bonds issued under Cal. St. 1887, p. 35, had lithographed name of their secretary attached to coupons and name of his successor signed to bonds when delivered, but lithographed signature of preceding secretary to coupons not changed, bonds were void.

Syl. 3 (IX, 78). When nonsuit warranted.

Approved in American etc. Plate Co. v. Pittsburgh etc. R. Co., 143 Fed. 795, holding railroad not liable to owner of property burned where one of its trains ran between fire and place where firemen were preparing to run hose; Bank of Havelock v. Western Union Tel. Co., 141 Fed. 527, upholding direction of verdict in action for damages for transmission of unauthorized telegram, where evidence insuffi-

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cient, though grounds on which verdict directed were untenable; Swift v. Johnson, 138 Fed. 875, where father abandoned family and contributed nothing to support, and son contributed earning to mother, father cannot recover substantial damages for death of son; Busby v. Anderson etc. Power Co., 136 Fed. 158, 69 C. C. A. 154, upholding direction of verdict in action by servant for injuries, where relation of master and servant not shown; Roessler etc. Co. v. Peterson, 134 Fed. 791, 67 C. C. A. 295, applying rule in action by servant for injuries sustained while slacking lime; Pacific Lumber Co. v. Moffat, 134 Fed. 838, 67 C. C. A. 442, upholding direction of verdict for defendant in action for breach of contract made by defendant's agent in giving order of lumber at exorbitant price, object of which was to fraudulently compel defendant to pay debt of his assignor in business; Gibson v. Canadian Pacific Nav. Co., 1 Alaska, 414, holding longshoreman injured while unloading vessel not contributorily negligent because he knew appliances were defective in manner in which used; Kielbeck v. Chicago etc. R. Co., 70 Neb. 576, 97 N. W. 751, upholding verdict for defendant in action for collision at crossing where defendant's witnesses heard whistle and plaintiffs testified they did not hear it; Chicago etc. Ry. Co. v. Sporer, 69 Neb. 15, 94 N. W. 994, holding evidence did not conclusively show that whistle not blown at crossing; Gunn v. Union R. R. Co., 27 R. I. 326, 62 Atl. 120, upholding Gen. Laws 1896, c. 251, § 11, authorizing supreme court to direct verdict without further trial by jury; Hehir v. Rhode Island Co., 26 R. I. 32, 58 Atl. 247, applying rule in action for negligence; dissenting opinion in Davenport v. Southern Ry. Co., 135 Fed. 968, 68 C. C. A. 444, arguendo.

Syl. 5 (IX, 80). Bonds—purchaser from bona fide purchaser.

Approved in Board of Commrs. v. Tollman, 145 Fed. 763, where railroad acquired county aid bonds prior to state decision construing constitutional provision, which bond statute violated, its assignees purchasing after decision are bona fide purchasers.

94 U. S. 288-299, 24 L. 103, FULLER v. YEUTZER.

Syl. 1 (IX, 81). Patents—Claim for result.

Approved in Manhattan etc. Co. v. Helios-Upton Co., 135 Fed. 788, holding void Baker patent No. 684,165, for method of regulating electric current.

Syl. 6 (IX, 82). Patents—Combination of old elements—Infringement.

Approved in Imperial Bottle Cap. etc. Co. v. Crown Cork etc. Co., 139 Fed. 323, holding Painter patent No. 468,258, for bottle-stopper, not infringed by device of Abbott patent No. 704,167.

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94 U. S. 308-310, 24 L. 161, MACKALL v. CHESAPEAKE ETC. CANAL CO.

Syl. 1 (IX, 83). Tax sale of exempt property void.

Approved in Lancy v. Boston, 186 Mass. 132, 71 N. E. 304, where part of tract taken for railroad, another part for highway and remainder left to owner, sale of whole tract for single undivided tax on whole tract is void.

Syl. 2 (IX, 83). Forfeiture of privileges, how raised.

Approved in Newport News etc. Ry. etc. Co. v. Hampton Roads Ry. etc. Co., 102 Va. 807, 47 S. E. 843, failure to complete street railway line within time limited cannot be taken advantage of in action by competitor to enjoin construction of line.

94 U. S. 315-321, 24 L. 192, UNITED STATES v. FOX.

Syl. 2 (IX, 84). Law governing disposition of realty.

Approved in Kane v. Luckman, 131 Fed. 618, refusing specific performance of contract for purchase of cows in exchange for farm; Hall v. Gabbert, 213 Ill. 215, 72 N. E. 808, right of bastard to inherit property in Illinois is governed solely by laws thereof; Succession of Hasling, 114 La. 296, 38 So. 174, validity of will made in Louisiana by citizen of Louisiana bequeathing realty situated in Mississippi must be tested by laws of Mississippi; Moen v. Moen, 16 S. D. 214, 92 N. W. 14, where prior to taking effect of Comp. Laws, § 3403, nonresident alien acknowledged in writing paternity of bastard, on his death after enactment of § 3403, child inherited his realty in South Dakota.

94 U. S. 324-342, 24 L. 224, BARNEY v. KEOKUK.

Syl. 5 (IX, 87). Riparian owner takes accretions.

Approved in McBride v. Steinweden, 72 Kan. 513, 83 Pac. 823, where Mississippi river is part of boundary between Kansas and Missouri and course of river is changed by accretion, center of main channel continues to be boundary.

Syl. 7 (IX, 87). State law governs title to tide lands.

Approved in Frank v. Goddin, 193 Mo. 394, 91 S. W. 1058, riparian owner of land in Missouri owns only to low-water mark; Franzini v. Layland, 120 Wis. 82, 97 N. W. 503, unsurveyed islands in navigable river pass with conveyance of surveyed land to which they are appurtenant.

Syl. 8 (IX, 88). Land grant bordering on river.

Approved in dissenting opinion in Kneeland v. Korter, 40 Wash. 374, 82 Pac. 613, 1 L. R. A. (N. S.) 745, majority holding where tide lands within limits of railroad grant identified and surveyed prior to admission of state railroad entitled to land under state constitutional provision disclaiming title to patented tide lands, though patent issued after constitution.

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Syl. 10 (IX, 89). Street bordering on river—Access.

Approved in Conradt v. Miller, 2 Alaska, 436, granting injunction to prevent building of wharves by private persons on navigable stream in front of plaintiff's property; Brown v. Electric Co., 138 N. C. 538, 107 Am. St. Rep. 554, 51 S. E. 64, 69 L. R. A. 631, electric light company granted right to erect poles in streets cannot cut down trees on edge of sidewalks without compensating abutting owners.

Syl. 11 (IX, 89). Grant of right of way over street.

Approved in Whittaker v. Atlanta etc. R. Co., 143 Fed. 585, under Ga. Civ. Code, § 2167, lot owner cannot enjoin construction of railroad along street, approved by council, on ground that change of grade will injure lot.

Syl. 12 (IX, 90). Authorizing building on street.

Approved in Conradt v. Miller, 2 Alaska, 436, granting injunction to prevent building of wharves by private persons on navigable stream in front of plaintiff's property.

Syl. 14 (IX, 91). Authorizing packet depot—Navigable waters.

Approved in Muhlker v. New York etc. R. R. Co., 197 U. S. 567, 49 L. 876, 25 Sup. Ct. 522, owner of realty abutting on city street who has contract right to easement of light and air may enjoin change from surface to elevated railroad made under statutory command; McAlpine v. Chicago etc. Ry. Co., 68 Kan. 212, 75 Pac. 75, 64 L. R. A. 85, arguendo.

94 U. S. 343-347, 24 L. 229, FIRST NAT. BANK v. WHITMAN.

Syl. 1 (IX, 91). Action by payee of check against bank.

Approved in dissenting opinion in Burton v. United States, 196 U. S. 309, 49 L. 491, 25 Sup. Ct. 243, majority holding indictment charging receipt of check at St. Louis and alleging payment thereon there not supported by evidence of receipt of St. Louis check in Washington, deposited in local bank, and paid at St. Louis, where amount thereof immediately on deposit, credited by Washington bank to defendant; Guthrie Nat. Bank v. Gill, 6 Okl. 563, 54 Pac. 435, where depositor makes draft on his bank and then makes assignment for creditors, refusal of payment of draft when presented after assignment does not give right of action against drawee.

Distinguished in Bank of Indian Territory v. First Nat. Bank, 109 Mo. App. 671, 83 S. W. 537, payment of draft by drawee estops him from showing that he was mistaken in supposing he had money in his hands to pay it.

Syl. 3 (IX, 92). Certification of check discharges drawer.

Approved in Noble v. Doughten, 72 Kan. 354, 83 Pac. 1054, determining lack of diligence where substituted check sent through clearing-house on day after its receipt.

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Syl. 4 (IX, 92). Forgery of check—Settlement of accounts.

Approved in Western Union Tel. Co. v. Bi-Metallic Bank, 17 Colo. App. 233, 68 Pac. 116, where bank paid check on face of indorsement, which was made to "Daley," while check was payable to Daily, bank is liable.

Syl. 5 (IX, 93). Payment of check—Unauthorized indorsement.

Approved in Merchants' Bank v. Prudential Ins. Co., 110 Mo. App. 66, 84 S. W. 102, indorsement of payee's name on check without authority creates no privity of contract between drawer and drawee.

94 U. S. 348-350, 24 L. 194, EX PARTE FLIPPIN.

Syl. 1 (IX, 93). Jurisdiction continues till satisfaction.

Cited in King v. Davis, 137 Fed. 233, arguendo.

Syl. 3 (IX, 93). Mandamus to control decision.

See 98 Am. St. Rep. 892, note.

94 U. S. 351-371, 24 L. 195, CROMWELL v. SAC COUNTY.

Syl. 1 (IX, 93). Judgment as bar.

Approved in Fayerweather v. Ritch, 195 U. S. 300, 49 L. 210, 25 Sup. Ct. 58, holding validity of releases res adjudicata where decree could not have been rendered without upholding releases; Bredin v. National Metal etc. Co., 147 Fed. 743, interlocutory decree in infringement suit is conclusive in subsequent suit where it has ripened into final decree; United States Fastener Co. v. Bradley, 143 Fed. 530, decree of dismissal for failure to prosecute is not res adjudicata; Robinson v. American Car etc. Co., 142 Fed. 172, decree in infringement suit submitted on pleadings sustaining sufficiency of answer denying plaintiff was inventor of device bars second suit for infringement; Westinghouse etc. Co. v. Kansas City So. Ry. Co., 137 Fed. 31, upholding joinder of cause of action on mechanic's lien with cause of action on equitable preference; Groton Bridge etc. Co. v. Clark etc. Brick Co., 136 Fed. 34, 68 C. C. A. 577, where, in action on contract, defendant answers and counterclaims for damages for breach by plaintiff, and fails to appear at trial, judgment bars subsequent suit on same facts set up in counterclaim; Gordon v. Ware Nat. Bank, 132 Fed. 449, 67 L. R. A. 550, 65 C. C. A. 580, judgment foreclosing pledge of life insurance policy bars administrator from claiming proceeds; Allen v. City of Davenport, 132 Fed. 221, 65 C. C. A. 641, where in suit by property owners street-paving contract declared void and enforcement of assessment enjoined, judgment barred suit by city to enforce lien on quantum meruit under curative statute; Third Nat. Bank v. Atlantic City, 130 Fed. 754, 65 C. C. A. 177, applying rule where bill to establish right to fund setting out grounds of right was taken pro confesso and decree rendered thereon; Koehler v. Holt Manufacturing Co., 146 Cal. 337, 80 Pac. 74, decree in action for monthly dues under order by third person that order had been revoked is res adjudicata in suit for other installments; Allis v. Hall, 76 Conn. 328,

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56 Atl. 640, where by mutual mistake mortgage did not except from covenant against encumbrances principal of prior mortgage, and mortgagee recovered for breach of covenant, mortgagor could, after decision denying cross-complaint for reformation on ground of laches, restrain enforcement of judgment; Stethem v. Skinner, 11 Idaho, 379, 82 Pac. 452, where water decree is clear as to stream from which distribution should be made, water-master cannot examine findings for directions; Cannon v. Castleman, 162 Ind. 8, 69 N. E. 456, where one sued on contract purposely omits to set up defense of fraud in obtaining contract, judgment against him is res adjudicata in suit for relief against such judgment on ground of fraud in contract; Defries v. McMeans, 121 Iowa, 541, 97 N. W. 65, judgment that land contracts not assessable for particular year estops defendant from claiming they were assessable for subsequent year; Lockhart v. Leeds, 12 N. M. 162, 76 Pac. 314, judgment for defendant on bill to declare mining location void for fraud and violation of agreement to locate for plaintiff bars suit to have property declared held in trust for plaintiff; Board of County Commrs. v. Cross, 12 N. M. 78, 73 Pac. 617, judgment after sustaining demurrer where complaint not amended and in determination of which material issues of suit decided is bar to new action; Pakas v. Hollingshead, 184 N. Y. 217, 112 Am. St. Rep. 606, 77 N. E. 42, 3 L. R. A. (N. S.) 1042, where goods are deliverable and payable in installments, judgment for damages for nondelivery of part of goods bars action for failure to deliver balance; Bidwell v. Bidwell, 139 N. C. 411, 52 S. E. 58, 2 L. R. A. (N. S.) 324, where, after defendant obtained divorce in North Dakota in which plaintiff appeared, latter sued in Massachusetts and divorce denied on ground of validity of first divorce, Massachusetts decree is binding in maintenance suit; Territory v. Hopkins, 9 Okl. 150, 59 Pac. 981, applying rule where decree upheld county bonds; Randall v. Carpenter, 25 R. I. 642, 57 Atl. 866, finding in suit for agreed compensation for services that services not rendered is conclusive in action on quantum meruit; Memphis City Bank v. Smith, 110 Tenn. 360, 75 S. W. 1071; judgment for bank in action against indorser, in which cross-bill, to which pledgor of security joined, to recover usury, is res adjudicata assumpsit for conversion of pledge; W. C. Belcher Land Mtg. Co. v. Norris, 34 Tex. Civ. 113, 78 S. W. 392, judgment in action by land owner to cancel mortgage on ground that mortgagee knew mortgagor was not owner, upholding mortgage, concludes owner on foreclosure where he pleads usury; Hearst v. Putnam Min. Co., 28 Utah, 200, 107 Am. St. Rep. 698, 77 Pac. 758, 66 L. R. A. 784, decree in suit by stockholders to cancel conveyance of corporation's property for fraud concludes other stockholders in subsequent suit for same purpose based on same facts; State v. Mortensen, 27 Utah, 44, 74 Pac. 351, denying rehearing in criminal case where question of misconduct of jury determined on prior appeals; Compton v. Seattle, 38 Wash. 525, 80 Pac. 760, applying rule to condemnation proceedings; Davis v. Schmidt, 126 Wis. 469, 110 Am. St. Rep. 938, 106 N. W. 122, judgment for interest on note binds party against whom rendered in subsequent action on

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note itself in which same matters are in issue; Pereles v. Gross, 126 Wis. 132, 110 Am. St. Rep. 901, 105 N. W. 222, applying rule in suit by mortgagees to claim proceeds of damages recovered by lot owner for injuries to land.

Syl. 2 (IX, 96). Judgment bar only as to matters in issue.

Approved in Ex parte Ow Guen, 148 Fed. 927, where on return of Chinese his claim that he was merchant not investigated by immigration officials, but he was deported because of former status as unregistered laborer, decision not conclusive against right to enter as merchant; Delaware etc. R. Co. v. Kutter, 147 Fed. 58, where in action for money due on contract only defense pleaded was breach of contract, judgment therein does not bar action for wrongful termination of contract; Leonard v. Simplex etc. Heating Co., 145 Fed. 946, where bill in infringement alleged that defendant claimed right to make infringing articles by virtue of another patent and that same was void, but defendant did not set up patent as defense, decree for complainant not bar to suit for infringement of second patent; Harrison v. Remington Paper Co., 140 Fed. 401, denial of motion for execution against stockholder on judgment against corporation in which defense of prior action under Kan. Gen. St. 1889, §§ 1200, 1204, was pleaded, does not estop plaintiff from litigating issues in action between same parties under §§ 1200, 1204; In re Drumgoole, 140 Fed. 209, order of referee directing trustee to return to purchaser of goods sold by trustee part of purchase money on account of shortage in quantity, where no defense made, does not bind trustee when much larger claim filed involving other packages; United States Min. Co. v. Lawson, 134 Fed. 776, 67 C. C. A. 587, issuance of patent to owner of one of two overlapping claims does not estop owner of other claim from asserting priority in controversy respecting extralateral rights not involved in patent proceedings; Oman v. Bedford etc. Stone Co., 134 Fed. 69, 67 C. C. A. 190, affirming Bedford etc. Stone Co. v. Oman, 134 Fed. 453, holding decree in favor of right of individual to car service over sidetrack operated by carrier not res adjudicata in subsequent suit after sale of track to private party who was party to former suit; Rankin v. City of Big Rapids, 133 Fed. 673, 66 C. C. A. 568, where in probate proceedings by receiver of bank to establish claim for assessment on decedent's stock it was decided she was owner thereof, defendants in subsequent suit by receiver's successor against decedent's distributees to recover subsequent assessments cannot deny decedent's ownership; Georgia etc. Banking Co. v. Wright, 132 Fed. 916, 917, where Georgia court in suit between state and corporation decided that charter exempted company from tax in excess of certain percentage of earnings, state concluded in subsequent suit for taxes for other years under different statute; Columbia Ave. Sav. Fund etc. Co. v. Dawson, 130 Fed. 165, mortgagee is not bound by judgment against mortgagor in suit commenced after mortgage given and to which he was not party; Clark v. Knox, 32 Colo. 348, 76 Pac. 374, where in suit to remove cloud caused by attachment against husband it was held that attach-

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ment levy antedated delivery of deeds from husband to wife, decree was not res adjudicata in suit to remove cloud caused by later levy on other lands embraced in same deeds; Georgia R. R. etc. Co. v. Wright, 124 Ga. 604, 605, 53 S. E. 255, 256, suit to enjoin collection of tax for one year is no bar to suit to enjoin similar taxes for another year; Stone v. Salisbury, 209 Ill. 65, 70 N. E. 608, decree partitioning property of decedent naming certain person as his child and heir does not conclude heirs of widow in subsequent suit not involving such property as to parentage of such person; Bennett v. First Nat. Bank, 128 Iowa, 9, 102 N. W. 131, where, in suit to establish priority of liens, default foreclosure decree, reciting that H. entitled to benefit of security because of assumption of note, though pleading did not allege assumption, did not bind defendant to first exhaust H.'s liability before proceeding against debtor's property; Stroup v. Pepper, 69 Kan. 245, 247, 76 Pac. 826, 827, where, in ejectment, defendant claimed rights of mortgagee in possession, fact that in prior suit defendant in ejectment sought to foreclose mortgage, but reference to it stricken from pleadings, decree therein did not affect defendant's rights as mortgagee in possession; Schmidt v. Louisville etc. Ry. Co., 119 Ky. 299, 84 S. W. 317, applying rule in action on coupons where judgment rendered in other suit on other coupons from same bond; Gentry v. Pacific Livestock Co., 45 Or. 238, 77 Pac. 116, construing effect of decree on appeal in suit to enjoin trespass where defendant entered land under contract; Selbie v. Graham, 18 S. D. 375, 100 N. W. 757, judgment dismissing action against administrator based on claim that plaintiff owned property in name of decedent does not estop plaintiff in action by administrator for use of property from setting up defense that he was joint owner; Davis v. Schmidt, 126 Wis. 463, 110 Am. St. Rep. 938, 106 N. W. 120, in action on note, answer admitting recovery of judgment for interest on note is no bar to recovery on note where answer denies right to recover.

Syl. 3 (IX, 107). Judgment on county bonds as estoppel.

Distinguished in Rew v. Independent School Dist., 125 Iowa, 33, 106 Am. St. Rep. 282, 98 N. W. 804, federal decree based on conclusion that school district is estopped by recitals in bonds from setting up certain defenses is res adjudicata in state court.

Syl. 5 (IX, 102). Recitals in county bonds as estoppel.

Approved in Kittel v. Trustees etc. Improvement Fund, 139 Fed. 955, holding trustees of Florida improvement fund estopped of record from denying title to swamp lands by certificate reciting congressional act relating to lands and acceptance of grant by state and state statute reciting grant to railroad and their promise to make deeds under such grants when patents obtained.

94 U. S. 371-382, 24 L. 271, JOHNSON v. HARMON.

Syl. 1 (IX, 103). Bill of exceptions on feigned issue.

Approved in In re Neasmith, 147 Fed. 163, applying rule in bankruptcy.

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Syl. 4 (IX, 103). Deeds—Capacity to understand.

Approved in Burnham v. Burnham, 119 Wis. 514, 100 Am. St. Rep. 895, 97 N. W. 178, upholding marriage settlement made by husband addicted to excessive use of intoxicants where he was sober at time of making agreement. See 107 Am. St. Rep. 544, note.

94 U. S. 382-391, 24 L. 173, BEALL v. WHITE.

Syl. 1 (IX, 103). Statutory liens without possession.

Approved in Becker v. Brown, 65 Neb. 269, 91 N. W. 179, upholding agister's lien.

Syl. 4 (IX, 104). Mortgage of after-acquired property.

See 109 Am. St. Rep. 516, note.

Syl. 5 (IX, 104). Landlord and tenant—Surrender, how made.

Approved in Kastner v. Campbell, 6 Ariz. 149, 53 Pac. 587, in action for rent, lessee's acts toward surrender of lease before rent accrued without connecting them with acquiescence of lessor inadmissible.

94 U. S. 391-397, 24 L. 248, McCREADY v. VIRGINIA.

Syl. 1 (IX, 105). Title to tide lands.

Approved in Commonwealth v. Boston Terminal Co., 185 Mass. 283, 70 N. E. 125, under Acts 1896, p. 520, creating terminal company to build union depot, company could not avoid payment for lands of state below low-water mark, condemned by it, and embraced within street extensions; Taylor v. Commonwealth, 102 Va. 766, 770, 776, 102 Am. St. Rep. 865, 47 S. E. 878, 879, 882, Acts 1899-1900, p. 797, leasing tract lying under waters of York river below low-water mark, including artesian well thereon, does not interfere with rights of riparian owners; dissenting opinion in State v. Mallory, 73 Ark. 254, 83 S. W. 961, 67 L. R. A. 773, majority holding void Acts 1903, p. 306, protecting fish and game and prohibiting nonresidents from hunting or fishing.

Syl. 2 (IX, 106). Right of fishery as property.

Approved in State v. Mallory, 73 Ark. 247, 83 S. W. 959, 67 L. R. A. 773, holding void Acts 1903, p. 306, prohibiting nonresidents from hunting or fishing; State v. Price, 71 N. J. L. 254, 58 Atl. 1017, upholding P. L. 1902, p. 170, regulating taking and cultivating of oysters; People v. Bootman, 180 N. Y. 9, 72 N. E. 507, upholding Laws, 1900, p. 22, making it unlawful to have imported game in possession during close season; Louisiana v. Mississippi, 202 U. S. 52, 50 L. 932, 26 Sup. Ct. 408, arguendo.

Syl. 3 (IX, 106). Privileges of citizenship—Right of fishery.

Approved in State v. Smith, 71 Ark. 479, 75 S. W. 1081, upholding statute prohibiting stock from running at large; Daniels v. Homer, 139 N. C. 222, 51 S. E. 993, 3 L. R. A. (N. S.) 997, upholding Gen. Assem. Acts 1905, c. 292, § 9, authorizing seizure and sales of appliances used in illegal fishing; State v. Young, 138 N. C. 572, 50 S. E. 213, license authorizing licensee to lay off oyster-bed in waters of state is not free-

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hold interest in land so as to qualify license for jury duty; Brooks v. Tripp, 135 N. C. 161, 47 S. E. 402, upholding Laws 1903, p. 723, protecting shell-fish during close season, and providing for commissioner whose salary shall be paid by the tax levied on shell-fish taken out of county; dissenting opinion in State v. Mallory, 73 Ark. 258, 83 S. W. 963, 67 L. R. A. 773, majority holding void Acts 1903, p. 306, prohibiting nonresidents from hunting or fishing.

94 U. S. 405-414, 24 L. 232, GOULD v. DAY.

Syl. 1 (IX, 108). Deeds—Presumption as to delivery.

Cited in Brumby v. Jones, 141 Fed. 323, arguendo.

94 U. S. 423-429, 24 L. 204, DAVIS v. BROWN.

Syl. 2 (IX, 110). Indorsement and contemporaneous agreement.

Approved in Crilly v. Gallice, 148 Fed. 835, construing together contract of indorsement of note and contemporaneous written agreement for compromise of indebtedness; Myrick v. Purcell, 95 Minn. 134, 103 N. W. 902, applying rule where interest in patent sold and notes given in payment under written agreement that vendor should not sell notes, but that they should be paid out of vendee's share of profits.

Syl. 3 (IX, III). Omission of indorser to plead release.

Approved in Kittel v. Trustees etc. Improvement Fund, 139 Fed. 955, holding trustees of Florida improvement fund estopped of record from denying title to swamp lands by certificate reciting congressional act relating to lands, and acceptance of grant by state statute reciting grant to railroad and their promise to make deeds under grant when patents obtained.

Syl. 4 (IX, 111). Judgment as estoppel.

Approved in Delaware etc. R. Co. v. Kutter, 147 Fed. 58, where in action for money due on contract only defense pleaded was breach of contract, judgment therein does not bar action for wrongful termination of contract; In re Drumgoole, 140 Fed. 209, order of referee directing trustee to return to purchaser of goods sold by trustee part of purchase money on account of shortage in quantity, where no defense made, does not bind trustee when much larger claim filed involving other packages; In re Spalding, 139 Fed. 247, where state court appointed receiver because defendant had conveyed property in fraud of creditors, appointment was not act of bankruptcy on part of defendant as one made under laws of state "because of insolvency" within Comp. St. Supp. 1903, p. 410; Bedford etc. Stone Co. v. Oman, 134 Fed. 453, decree in favor of right of individual to car service over sidetrack operated by carrier not res adjudicata in subsequent suit after sale of track to private party who was party to former suit; Georgia etc. Banking Co. v. Wright, 132 Fed. 97, where Georgia court in suit between state and corporation decided that charter exempted company from tax in excess of certain percentage of earnings, state concluded in subsequent suit for taxes for other years under different

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statute; Stroup v. Pepper, 69 Kan. 246, 76 Pac. 827, where in ejectment defendant claimed rights of mortgagee in possession, fact that in prior suit defendant in ejectment sought to foreclose mortgage, but reference to it stricken from pleadings, decree therein did not affect defendant's right as mortgagee in possession; Schmidt v. Louisville etc. Ry. Co., 119 Ky. 299, 84 S. W. 317, applying rule in action on coupons where judgment rendered in other suit on other coupons from same bond; State v. McEldowney, 54 W. Va. 700, 47 S. E. 652, dismissal of bill which does not state facts not calling for relief is no bar to second bill on same cause of action stating additional facts which make second bill good.

94 U. S. 444-455, 24 L. 207, MULLER v. DOWS.

Syl. 1 (IX, 116). Citizenship—Suit by or against corporation.

Approved in Davis v. Chesapeake etc. Ry. Co., 116 Ky. 151, 75 S. W. 277, compliance by foreign corporation with statute prohibiting such corporations from exercising right of eminent domain or acquiring realty until they become corporations under state laws does not deprive corporation of right of removal of actions.

Syl. 2 (IX, 117). Jurisdiction—Creation of corporation should appear.

Approved in Knight v. Lutcher etc. Lumber Co., 136 Fed. 406, 69 C. C. A. 248, allegation that corporation is citizen of certain state is insufficient; Kansas City etc. Ry. Co. v. Prunty, 133 Fed. 15, 66 C. C. A. 163, arguendo.

Syl. 3 (IX, 117). Citizenship of consolidated corporation.

Approved in Walsey v. Chicago etc. Ry. Co., 147 Fed. 614, where railroad formed by consolidation of two companies, one from Illinois and other from Iowa, consolidated with Iowa companies, it was corporation of either state for purposes of federal jurisdiction; Dodd v. Louisville Bridge Co., 130 Fed. 195, where corporation incorporated in several states was formed by consolidation of corporations of said states and was sued on contract made by one of such consolidating companies, suit by citizen of one of other states was not removable.

Syl. 5 (IX, 118). Foreclosure sale of railroad in other state.

Approved in Chesapeake Beach Ry. Co. v. Washington etc. R. R. Co., 199 U. S. 251, 50 L. 178, 26 Sup. Ct. 25, deed from mortgage trustee conveys whatever title he had though it recites decree of foreclosure; Riverdale Cotton Mills v. Alabama etc. Mfg. Co., 198 U. S. 197, 49 L. 1016, 25 Sup. Ct. 629, federal court decreeing foreclosure suit in which diverse citizenship admitted, of land partly in state, may by ancillary suit restrain attack on purchaser's title by state suit; Clark v. Seagraves, 186 Mass. 438, 71 N. E. 816, upholding jurisdiction to have deed absolute declared mortgage and to redeem therefrom though land is in another state; Dickson v. Loehr, 126 Wis. 645, 106 N. W. 794, 4 L. R. A. (N. S) 986, where vendee conveyed land in another state as security for payment of part of purchase price, vendor in

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action on contract could have judgment requiring purchaser to pay debt or convey land pledged.

Distinguished in Jones v. Byrne, 149 Fed. 469, federal court cannot decree foreclosure of lien on, and sale of, land in another state.

94 U. S. 457-463, 24 L. 251, CONNECTICUT ETC. LIFE INS. CO. v. SCHAEFER.

Syl. 5 (IX, 122). What creates insurable interest.

Approved in Mechanics' Nat. Bank v. Comins, 72 N. H. 15, 101 Am. St. Rep. 650, 55 Atl. 193, one advancing funds to conduct business of corporation has insurable interest in life of manager and promoter; Brett v. Warnick, 44 Or. 521, 102 Am. St. Rep. 639, 75 Pac. 1064, cousin of member of beneficial society may agree with him, beneficiaries consenting, for assignment of policy to secure loan.

Syl. 6 (IX, 122). Wager policy void.

Approved in Gordon v. Ware Nat. Bank, 132 Fed. 446, 67 L. R. A. 550, 65 C. C. A. 580, where decedent insured life for wife's benefit and later they pledged policy for loan to husband, and lender foreclosed pledge and collected insurance, administrator cannot claim proceeds; Hinton v. Mutual etc. Life Assn., 135 N. C. 323, 102 Am. St. Rep. 545, 47 S. E. 477, 65 L. R. A. 161, where life policy was secured under agreement between assured and stranger that latter would pay premiums and take proceeds, and policy was assigned to him and he sued as administrator, he could not recover.

Syl. 8 (IX, 122). Insurance—Cessation of insurable interest.

Approved in Gordon v. Ware Nat. Bank, 132 Fed. 446, 447, 67 L. R. A. 550, 65 C. C. A. 580, where decedent insured life for wife's benefit and they pledged policy for loan to husband and lender foreclosed pledge and collected insurance, administrator cannot claim proceeds; White v. Brotherhood of American Yoeman, 124 Iowa, 295, 104 Am. St. Rep. 323, 99 N. W. 1072, where benefit certificate was payable to certain person, by name, she being wife of insured, and subsequently they were divorced, and insured remarried, but did not change beneficiary, first wife entitled to proceeds of certificate; King v. Cram, 185 Mass. 106, 69 N. E. 1051, upholding assignment of policy to sister in law, to whom insured owed money; Blum v. New York Life Ins. Co., 197 Mo. 525, 526, 95 S. W. 320, Rev. St. 1899, § 7895, providing that on divorce husband may designate other beneficiary in life policy does not apply to policy issued prior to statute; Hinton v. Mutual etc. Life Assn., 135 N. C. 324, 102 Am. St. Rep. 545, 47 S. E. 477, 65 L. R. A. 161, where life policy payable to estate of insured was secured, under agreement between assured and stranger that latter would pay premiums and take proceeds, and policy was assigned to him and he sued as administrator, he could not recover; Mechanics' Nat. Bank v. Comins, 72 N. H. 16, 20, 101 Am. St. Rep. 650, 55 Atl. 193, 195, one advancing funds to conduct business of corporation has insurable interest in life of manager and promoter.

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Distinguished in Griffin v. Equitable Assur. Soc., 119 Ky. 861, 84 S. W. 1166, administrator cannot maintain action on policy procured by fraudulent representations of beneficiaries and insured that former were creditors of latter.

94 U. S. 467-469, 24 L. 166, HINCKLEY v. GILMAN, CLINTON ETC. R. R. CO.

Syl. 1 (IX, 124). Foreclosure—Appeal by receiver not party.

Approved in Cassett v. Mitchell Coal & Coke Co., 150 Fed. 35, where in action against railroad for violation of interstate commerce act plaintiff obtained order against railroad officers requiring production of books before trial, order was final, decision reviewable on error.

Distinguished in Heinze v. Butte etc. Min. Co., 129 Fed. 339, 64 C. C. A. 15, neither circuit court order approving receiver's monthly report nor order requiring him to pay expenses incurred is appealable.

94 U. S. 469-476, 24 L. 256, MILWAUKEE ETC. RY. v. KELLOGG.

Syl. 3 (IX, 125). Experts—Matters of common observation.

Approved in Illinois Central R. R. Co. v. Smith, 208 Ill. 612, 70 N. E. 629, in action for injuries to railroad employee engaged in dumping ballast cars, evidence of attending physicians that foot injured by coming in contact with uneven surfaces is not expert evidence; Cook v. Stimson Mill Co., 41 Wash. 319, 83 Pac. 421, opinion of witness as to speed of train at time it was wrecked by running into cattle, based wholly on conditions surrounding wreck, is inadmissible.

Syl. 4 (IX, 125). Proximate cause is for jury.

Approved in Shugart v. Atlanta etc. Ry., 133 Fed. 509, 510, 66 C. C. A. 379, applying rule in action for death of fireman caused by derailment of train due to defective track; Southern Ry. Co. v. Jones, 143 Ala. 335, 39 So. 121, applying rule where ordinance required conductor to stop car before reaching railroad tracks and walk across track, and conductor walked only to middle of track; Omaha St. R. Co. v. Larson, 70 Neb. 595, 97 N. W. 825, applying rule where one injured while driving across street-car track.

Syl. 5 (IX, 125). Proximate cause—No intermediate cause.

Approved in American Bridge Co. v. Seeds, 144 Fed. 610, determining proximate cause of injury to bridge workman knocked off by being struck by tackle load importunely raised on foreman's signal; Demolli v. United States, 144 Fed. 366, one causing obscene matter written by him to be printed in newspaper, knowing paper would be mailed to readers, is punishable under Rev. St., § 3893; Texas & P. Ry. Co. v. Coutourie, 135 Fed. 473, 68 C. C. A. 177, in action for loss of goods by fire while in carrier's possession, through its negligence in protecting it, failure to define distinction between proximate and remote cause not error where court instructed that defendant's negligence must have been direct cause of loss; Shugart v. Atlanta etc. Ry., 133 Fed. 511, 66 C. C. A. 379, killing of fireman by derailment of train caused by

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defective track, does not excuse company though train running at excessive speed; Davis v. Mercer Lumber Co., 164 Ind. 424, 73 N. E. 903, applying rule where mill employee injured by improperly guarded saw; Claypool v. Wigmore, 34 Ind. App. 41, 71 N. E. 510, holding owner of building in which elevator shaft door partially open not liable for injuries caused by stepping into shaft when cage not there; Fishburn v. Burlington etc. Ry. Co., 127 Iowa, 499, 103 N. W. 487, where boy injured by falling of snow fence defectively constructed, fact that boy had earlier in the day found panel down and put it in place, does not show proximate cause of injury was not defective construction; St. Louis etc. R. R. Co. v. League, 71 Kan. 84, 80 Pac. 47, where fire started in night by railroad spread to plaintiff's premises and he fought it till he thought danger past and it later broke out again, original negligence was proximate cause of final burning; Bowden v. Derby, 99 Me. 212, 58 Atl. 994, determining proximate cause of injury to employee injured by falling of derrick boom; Haley v. St. Louis Transit Co., 179 Mo. 35, 77 S. W. 732, 64 L. R. A. 295, act of street-car company in carrying passengers beyond destination is not proximate cause of injury sustained by falling on sidewalk while returning to destination; Mast v. Sapp, 140 N. C. 542, 111 Am. St. Rep. 871, 53 S. E. 353, 5 L. R. A. (N. S.) 379, where city reservoir broke and crushed house and owner, right of action of latter's executor for destruction of house depends on whether injury committed before or after her death; Carey v. Preferred Accident Ins. Co., 127 Wis. 72, 106 N. W. 1056, where insured fell and sustained abrasion of skin and on eighth day physician called and found him suffering from blood poisoning resulting from infection, from which he died, accident proximate cause of death; Winchel v. Goodyear, 126 Wis. 277, 105 N. W. 827, applying rule where employee of sawmill injured by saw which defendant had left unguarded.

Syl. 6 (IX, 128). Proximate cause—Natural consequence.

Approved in United States etc. Co. v. Des Moines Nat. Bank, 145 Fed. 280, under bond indemnifying bank for dishonesty or culpable negligence of employee, surety not liable for loss of money, though employer did not count cash daily as instructed; McGill v. Michigan etc. Co., 144 Fed. 792, where superintendent of owner of vessel being changed from coal to oil burner, filled oil tank during progress of work, knowing workmen used candles, explosion due to his negligence; Quinette v. Bisso, 136 Fed. 840, 69 C. C. A. 825, act of passenger in taking passage in skiff across river in fog not proximate cause of death resulting from unlawful speed of tug which ran her down; Empire State etc. Co. v. American etc. Ry. Co., 135 Fed. 141, where cattle train diverted to other line on account of floods and cattle placed in pens, but to prevent cattle from drowning during other flood, they were driven into overhead viaduct and many starved, proximate cause of loss was flood; Jarnagin v. Travelers' Prot. Assn., 133 Fed. 894, 895, 68 L. R. A. 499, 66 C. C. A. 622, where deceased died from shot fired by third persons, while he was in custody of police

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under arrest, proximate cause of death was shot and not negligence of police in failing to protect him; Clark v. Kansas City etc. R. Co., 129 Fed. 343, 64 C. C. A. 19, where plaintiff owned warehouse near tracks and the track crew living near warehouse built fires on right of way and plaintiff called defendant's attention to danger, plaintiff not contributorily negligent where warehouse ignited in night by sparks; St. Louis etc. Ry. Co. v. Harrison, 76 Ark. 434, 89 S. W. 54, in action against carrier for assault by conductor during altercation as to pass, fact that defendant negligently wrote wrong date on pass is not proximate cause of injury; Green-Wheeler Shoe Co. v. Chicago etc. Ry. Co., 130 Iowa, 129, 106 N. W. 499, carrier liable for loss of goods by act of God where carrier negligently delayed shipment; Fishburn v. Burlington etc. Ry. Co., 127 Iowa, 492, 103 N. W. 485, applying rule where boy injured by falling of snow fence defectively constructed had earlier in the day found panel down and put it in place; Watters v. Waterloo, 126 Iowa, 204, 206, 101 N. W. 873, 874, where plaintiff fell through defective sidewalk and suffered from dizziness, such fall and dizziness not proximate cause of injury sustained by subsequent fall on another street due to failure to clear away ice; Schwarzschild v. Weeks, 72 Kan. 197, 83 Pac. 408, 4 L. R. A. (N. S.) 515, applying rule in action by servant for injuries caused by operation of beef-hoist in packing house; Foley v. McMahon, 114 Mo. App. 445, 90 S. W. 113, where driver did not know of defect in harness and when it broke he alighted to repair it, and while he had foot in front of wheel team started and crushed foot, furnishing defective harness not proximate cause of injury; Mayne v. Chicago etc. Ry. Co., 12 Okl. 16, 69 Pac. 935, applying rule in holding railroad blocking usual crossing to depot with freight train is not liable for injury to passenger compelled to choose other route to reach train.

94 U. S. 477-492, 24 L. 276, STARK v. STARR.

Syl. 1 (IX, 133). Demand cannot be split up.

Approved in Huntington etc. Pulverizer Co. v. Virginia-Carolina Chem. Co., 130 Fed. 560, bill for infringement of expired and unexpired patent alleging that infringement consists of use of machine embodying devices of both patents so joined as to make impossible apportionment of damages from use of each element, is not multifarious; Lockhart v. Leeds, 12 N. M. 164, 76 Pac. 314, judgment for defendant on bill to declare mining location void for fraud and violation of agreement to locate for plaintiff bars suit to have property declared held in trust for plaintiff.

Syl. 5 (IX, 134). Defective ratification of agent's act.

See 110 Am. St. Rep. 863, note.

94 U. S. 494-498, 24 L. 146, THE MARGARET.

Syl. 1 (IX, 134). Collision—Care required of tow.

Approved in The Violetta, 141 Fed. 693, tow without motive power not liable with tug for collision.

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Syl. 2 (IX, 135). Collision—Care required of tug.

Approved in The Britannia, 148 Fed. 497, holding tug towing scows liable for loss where it had but one hawser, which parted twice in calm weather, and parted again in storm; The Inca, 148 Fed. 365, 368, affirming 130 Fed. 41, 42, holding tug liable for grounding of tow on well-known mound of rocks in channel, and afterward hauling her off, instead of waiting for rising tide, thereby injuring bottom so that she sank; Gilchrist Transp. Co. v. Sicken, 147 Fed. 473, holding steamer towing sailing vessel into Duluth harbor on long line during strong wind liable for collision between tow and end of outer pier; The W. G. Mason, 131 Fed. 636, where two tugs towed steamer from dock through channel and she stranded against one side of channel, presumption is that stranding due to fault of tugs; The Joseph Peene, 130 Fed. 490, holding tug liable for injury to tow by floating ice; Williams v. Alaska Commercial Co., 2 Alaska, 64, where steamer towing schooner during storm abandoned tow after parting of hawser, she is liable for loss of life occasioned by wreck of schooner.

Syl. 3 (IX, 135). Tug must know channel.

Approved in The Potomac, 147 Fed. 294, holding tug liable for injury to tow by collision with jetty at mouth of creek which they were entering, for failure to make allowance for tide; The Naos, 144 Fed. 296, holding tug liable for starting on towage through narrow, shallow channel at full tide; Monongahela River etc. Coke Co. v. O'Neil, 144 Fed. 79, holding tug liable for capsizing of dredge and loss of machinery while being towed up river in rough water at excessive speed; Winslow v. Thompson, 134 Fed. 549, 67 C. C. A. 363, applying rule where tug attempted to tow loaded schooner over bar and she stranded; Rebstock v. Gilchrist Transp. Co., 132 Fed. 176, holding steamer in tow of two tugs not liable for collision with moored vessel caused by failure of rear tug to assist steamer in turning.

94 U. S. 498-499, 24 L. 260, SUPERVISORS v. KENNICOTT.

Syl. 1 (IX, 136). Matters reviewable on second appeal.

Approved in Montana Min. Co. v. St. Louis etc. Mill Co., 147 Fed. 904, and United States v. Denver etc. R. R. Co., 11 N. M. 154, 66 Pac. 552, both following rule. See 98 Am. St. Rep. 905, note.

94 U. S. 506-513, 24 L. 260, ALLORE v. JEWELL.

Syl. 1 (IX, 137). Setting deed aside—Weak-mindedness.

Approved in Wilkie v. Sassen, 123 Iowa, 424, 99 N. W. 125, setting aside contract for conveyance made by ignorant, illiterate and weak-minded vendor for grossly inadequate consideration where only earnest-money paid; Shevlin v. Shevlin, 96 Minn. 412, 414, 105 N. W. 262, 263, setting aside transfer of stock from weak-minded brother addicted to use of intoxicants.

Distinguished in Curtis v. Kirkpatrick, 9 Idaho, 639, 75 Pac. 763, holding evidence did not show grantor in deed and mortgage not mentally incompetent at time of execution thereof.

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94 U. S. 523-527, 24 L. 264, HYDE v. WOODS.

Syl. 1 (IX, 141). Sale of seat in stock exchange.

Approved in Zell v. Baltimore Stock Exchange, 102 Md. 495, 62 Atl. 810, 4 L. R. A. (N. S.) 435, where complainant furnished money to purchase seat in exchange in name of partner, he could not restrain sale thereof for payment of partner's debts to other members in accordance with rules, on ground that partner held seat in trust.

Syl. 2 (IX, 141). Bankruptcy—Sale of stock exchange seat.

Approved in O'Dell v. Boyden, 150 Fed. 736, upholding exclusive jurisdiction of bankruptcy court over proceeding by trustee of member of stock exchange, and prior assignee thereof to determine right to it; In re Hurlbutt, 135 Fed. 507, 68 C. C. A. 216, where, on bankruptcy of partnership seat in stock exchange contributed by one partner as share of capital, title to seat passed to firm's trustee in bankruptcy.

Syl. 4 (IX, 141). Bequest to lapse on insolvency.

Approved in Mason v. Rhode Island etc. Trust Co., 78 Conn. 85, 61 Atl. 58, devise to trustees to pay portion of income for benefit of plaintiff during minority and thereafter to pay him all or part income for life, he to have power to will fund, creates spendthrift trust.

94 U. S. 535-544, 24 L. 148, DOYLE v. CONTINENTAL INS. CO.

Syl. 1 (IX, 143). Statutes requiring agreement not to remove.

Approved in Victor Talking Mach. Co. v. American Graph. Co., 140 Fed. 862, prior agreement by which parties to infringement suit agree on terms of settlement on condition that patent is sustained does not deprive court of jurisdiction; Cheshire Prov. Inst. v. Anglo-American etc. Co., 132 Fed. 970, 66 C. C. A. 122, arguendo.

Syl. 2 (IX, 144). Imposing terms on foreign corporations.

Approved in Security etc. Ins. Co. v. Prewitt, 202 U. S. 251, 253, 254, 255, 50 L. 1015, 1016, 1017, 26 Sup. Ct. 619, affirming Prewitt v. Security etc. Ins. Co., 119 Ky. 327, 330, 331, 83 S. W. 612, 613, upholding Ky. St. 1903, § 631, providing for revocation of license of foreign insurance company removing suit to federal court; People v. Chicago etc. Ry. Co., 223 Ill. 591, 79 N. E. 147, upholding Hurd's Rev. St. 1905, c. 114, § 6, requiring railroads to make annual report to railroad commission; Wallace v. Mayor etc. of Reno, 27 Nev. 86, 73 Pac. 533, 63 L. R. A. 337, upholding provisions of acts of 1903, empowering Reno city boards to revoke licenses; Metropolitan Life Ins. Co. v. Board of Assessors, 115 La. 706, 39 So. 849, arguendo.

Distinguished in dissenting opinion in Security etc. Ins. Co. v. Prewitt, 202 U. S. 266, 267, 269, 50 L. 1022, 1023, 26 Sup. Ct. 619, majority upholding Ky. St. 1903, § 631, providing for revocation of license of foreign insurance company removing suit to federal court; dissenting opinion in Prewitt v. Security etc. Ins. Co., 119 Ky. 343, 84 S. W. 530, majority upholding Ky. St. 1903, § 631, providing for revocation of license of foreign insurance company removing suit to federal court.

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Syl. 4 (IX, 145). State may exclude foreign corporation.

Approved in Black v. Vermont Marble Co., 1 Cal. App. 720, 82 Pac. 1061, upholding Stat. 1871-72, p. 826, as amended by Stat. 1899, p. 111, providing that foreign corporation not designating person on whom process may be served within sixty days after commencing business cannot sue or defend actions; People v. Gardner, 143 Mich. 106, 106 N. W. 542, motives of city council in passing garbage ordinance not inquired into to determine its validity.

Syl. 5 (IX, 146). Corporations—Cancellation of license on removal.

Distinguished in dissenting opinion in Security etc. Ins. Co. v. Prewitt, 202 U. S. 260, 261, 50 L. 1019, 1020, 26 Sup. Ct. 619, majority upholding Ky. St. 1903, § 631, providing for revocation of license of foreign insurance company removing suit to federal court.

94 U. S. 545-549, 24 L. 283, DAVIS v. ALVORD.

Syl. 7 (IX, 147). Mechanics' lien laws liberally construed.

Approved in Salt Lake Hardware Co. v. Chainman Min. etc. Co., 137 Fed. 637, holding lien not void though statement filed claimed more than actually due, where it was result of mistakes and without fraud or wrongful intent; Russell v. Hayner, 130 Fed. 92, 64 C. C. A. 424, construing Civ. Code Alaska, §§ 262, 265, 266, relating to mechanics' liens.

94 U. S. 549-553, 24 L. 285, SOUTHERN EXPRESS CO v. DICKSON.

Syl. 1 (IX, 148). Carriers—Delivery to consignee as agent.

Approved in National Newark Banking Co. v. Delaware etc., 70 N. J. L. 779, 103 Am. St. Rep. 825, 58 Atl. 312, 66 L. R. A. 595, carrier must deliver goods to true owner claiming under consignee when it has notice of true owner's rights and bill of lading has been surrendered; dissenting opinion in Clegg v. Southern Ry. Co., 135 N. C. 156, 47 S. E. 670, majority holding railroad refusing to deliver freight to owner because he would not pay freight demanded where it was in excess of amount due, and fruit frozen, is liable though bill of lading not transferred to owner by consignee.

94 U. S. 553-561, 24 L. 130, DUTCHER v. WRIGHT.

Syl. 1 (IX, 148). Bankruptcy—Insolvency—Reasonable cause.

Distinguished in Hussey v. Richardson etc. Co., 148 Fed. 600, where creditor sold goods to bankrupt and latter told him he was solvent but could not pay bills promptly but had offer for property for sum in excess of debts, and creditor took chattel mortgage for claim, fact that debtor was insolvent and became bankrupt does not prove preference intended.

Syl. 2 (IX, 148). Bankruptcy—Creditors' reasonable cause—Insolvency.

Approved in Dokken v. Page, 147 Fed. 441, holding sale void as to bankrupt's creditors where stock sold at less than half of actual value

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after short negotiation without invoice or examination of goods or books; In re Moody, 134 Fed. 633, where bankrupt, within four months of bankruptcy, sold stock to firm, which paid debt to bank of which partners were stockholders and officers, and also transferred farm, title to which taken in wife's name, transfer was void under Bankr. Act, § 67e; Crandall v. Coats, 133 Fed. 969, holding preferred creditors chargeable with notice of bankrupt's insolvency at time of conveyance; Capital Nat. Bank v. Wilkerson, 36 Ind. App. 474, 75 N. E. 839, holding creditor had reasonable cause to believe preference intended at time payments made; Stevenson v. Milliken etc. Co., 99 Me. 326, 59 Atl. 475, holding defendant had no reasonable cause to believe preference intended to be given him.

Syl. 3 (IX, 149). Bankruptcy—Preferences—Computation of time.

Approved in In re Warner, 144 Fed. 988, under Bankr. Act, § 31a, attachment made on February 8th was dissolved by adjudication in bankruptcy on petition filed June 8th; In re Hill, 140 Fed. 984, where mortgage executed on March 22d, and petition in bankruptcy filed July 22d, mortgage is void under Bankr. Act, § 67e.

94 U. S. 561-567, 24 L. 287, AETNA LIFE INS. CO. v. FRANCE.

Syl. 1 (IX, 149). Assignment of life policy by insured.

Approved in Gordon v. Ware Nat. Bank, 132 Fed. 447, 67 L. R. A. 550, 65 C. C. A. 580, holding where deceased insured life for wife's benefit and both joined in assignment of policy to secure loan to husband, assignee is entitled to proceeds as against administrator; Rylander v. Allen, 125 Ga. 215, 53 S. E. 1036, upholding assignment to one having no insurable interest in life and who paid premiums; Mechanics' Nat. Bank v. Comins, 72 N. H. 20, 101 Am. St. Rep. 650, 55 Atl. 195, upholding assignment of policy to one having no insurable interest to secure notes.

Syl. 3 (IX, 149). Insurance—Policy for sister's benefit.

Approved in Wilton v. New York Life Ins. Co., 34 Tex. Civ. 158, 78 S. W. 404, niece who had no expectation of pecuniary benefit from uncle further than probability of occasional gift has no insurable interest.

94 U. S. 568-574, 24 L. 235, MERRILL v. YEOMANS.

Syl. 2 (IX, 151). Patents—Specification of claim.

Approved in Columbus Chain Co. v. Standard Chain Co., 148 Fed. 625, holding Carroll patent No. 620,826, for machine for regulating dimensions of chain links void for anticipation by Goerke Swiss patent No. 9592.

Syl. 3 (IX, 151). Patent claims liberally construed.

Approved in Cincinnati Ry. Supply Co. v. American Hoist etc. Co., 143 Fed. 325, holding Crosby patent No. 388,840, for wire rope clamp, limited in view of prior art.

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Syl. 4 (IX, 152). Patents for product and process.

Approved in American Crayon Co. v. Sexton, 139 Fed. 566, holding Liedke patent No. 476,051, for crayon-making machine, valid but not infringed.

94 U. S. 574-579, 24 L. 291, RELIEF FIRE INS. CO. v. SHAW.

Syl. 1 (IX, 152). Parol contract of insurance.

Approved in King v. Phoenix Ins. Co., 195 Mo. 303, 92 S. W. 895, and Summers v. Mutual Life Ins. Co., 12 Wyo. 382, 109 Am. St. Rep. 998, 75 Pac. 939, 66 L. R. A. 812, both following rule.

94 U. S. 589-593, 24 L. 294, CLAPP v. MASON.

Syl. 1 (IX, 156). Legacy taxes.

Approved in Vanderbilt v. Eidman, 196 U. S. 501, 49 L. 571, 25 Sup. Ct. 331, interest of residuary legatee is not taxable under War Revenue Act of 1898, §§ 29, 30, as amended in 1901; Eidman v. Tilghman, 136 Fed. 143, 69 C. C. A. 139, under War Revenue Act 1898, §§ 29, 30, as amended in 1901, taxing legacies, legacies left by testator who died within one year prior to time of taking effect of act of 1902, repealing such sections, are not taxable thereunder.

94 U. S. 593-599, 24 L. 294, CONNECTICUT MUT. LIFE INS. CO. v. SCHWENK.

Syl. 1 (IX, 156). Insurance—Correction of errors in proofs of loss.

Approved in Denver Life Ins. Co. v. Price, 18 Colo. App. 34, 69 Pac. 314, act of beneficiary in answering question in proof of loss as to cause of death by referring to physician's statement does not estop her from denying physician stated true cause, where physician relied solely on hearsay.

Syl. 2 (IX, 157). Entry in lodge minute-book as evidence—Age.

Approved in Bailey v. Fly, 35 Tex. Civ. 414, 80 S. W. 677, on issue as to age of voter, deposition of custodian of baptismal records that records prepared by his predecessor stated voter was born on certain day not admissible.

94 U. S. 606-610, 24 L. 214, RUSSELL v. PLACE.

Syl. 1 (IX, 158). Conclusiveness of judgment.

Approved in Territory v. Hopkins, 9 Okl. 150, 59 Pac. 981, applying rule to judgment upholding validity of county refunding bonds.

Syl. 2 (IX, 159). Judgment as bar—Precise question.

Approved in Delaware etc. R. Co. v. Kuttes, 147 Fed. 58, 59, judgment for plaintiff in action for money due under contract in which only defense was breach of contract by plaintiff is not bar to action for wrongful termination of contract by defendant; United States Fastener Co. v. Bradley, 143 Fed. 530, decree of dismissal for failure to prosecute is not res adjudicata; Georgia etc. Banking Co. v. Wright, 132 Fed. 917, where Georgia court in suit between state and corpora-

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tion decided that charter exempted company from tax in excess of certain percentage of earnings, state concluded in subsequent suit for taxes for other years under different statute; Hoffman v. Silverthorn, 137 Mich. 65, 100 N. W. 185, decision in mandamus to compel auditor to cancel tax sale and to issue certificate of purchase to relator is not conclusive where denial not on merits; State v. McEldowney, 54 W. Va. 701, 47 S. E. 652, applying rule to decree in suit to set aside tax deed; Lindemann v. Rusk, 125 Wis. 237, 104 N. W. 127, where personal representatives of stockholder in corporation which had expired by limitation of charter sued to enjoin stockholder, who organized new corporation of same name, sustaining demurrer is no bar to suit to recover for wrongful appropriation of goodwill of old corporation.

Syl. 3 (IX, 161). Res adjudicata—Extrinsic evidence.

Approved in Fayerweather v. Ritch, 195 U. S. 306, 49 L. 213, 25 Sup. Ct. 58, effect is res adjudicata of decree in case involving validity of releases not limited by oral testimony of trial judge six years after decision; Schwarz v. Kennedy, 142 Fed. 1029, judgment in favor of defendants for costs in replevin against two defendants, in which one of defenses was that plaintiff only owned undivided interest, is not bar to action against one defendant for conversion based on same trespass; Harrison v. Remington Paper Co., 140 Fed. 401, denial of motion for execution and dismissal of action under Kan. Gen. St. 1889, § 1192, in which defense of prior action under §§ 1200, 1204, was raised, is no bar to action under §§ 1200, 1204; In re Spalding, 139 Fed. 247, recital in state decree that receiver appointed on ground that debtor fraudulently conveyed property shows appointment not act of bankruptcy by defendant as one made under state laws because of insolvency within Bankr. Act, § 3a, subd. 4; First Nat. Bank v. City of Covington, 129 Fed. 798, determining effect of state decree that acceptance by bank of statute imposing taxes created contract with state by which bank exempted from local taxation; Fulton v. Gesterding, 47 Fla. 160, 36 So. 59, applying rule in garnishment where prior judgment for garnishee in garnishment proceedings set up; Draper v. Medlock, 122 Ga. 241, 50 S. E. 115, applying rule in action on indorsement to notes; Honesdale Co. v. Montgomery, 56 W. Va. 401, 49 S. E. 436, admitting oral evidence to show object of suit.

Syl. 5 (IX, 163). Judgment as estoppel—Uncertainty.

Approved in In re Drumgoole, 140 Fed. 210, order of referee on motion directing trustee to return to purchaser of goods sold by trustee part of price on account of shortage not binding on trustee when much larger claim filed involving other packages.

94 U. S. 610-614, 24 L. 268, NEW JERSEY MUTUAL LIFE INS. CO. v. BAKER.

Syl. 3 (IX, 164). Insurance—Parol to vary policy.

Distinguished in Connecticut Fire Ins. Co. v. Buchanan, 141 Fed. 891, in action on policy, oral testimony that parties intended that

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insurance should cover building when not occupied for purpose stated in contract.

94 U. S. 614-619, 24 L. 295, UNITED STATES v. JOSEPH.

Syl. 4 (IX, 165). Tenure of Taos Indians.

Approved in Territory v. Delinquent Taxpayers, 12 N. M. 144, 145, 76 Pac. 308, 309, lands of Pueblo Indians in New Mexico are taxable; Catron v. Laughlin, 11 N. M. 626, 631, 72 Pac. 30, 32, where New Mexico surveyor general declared Mexican grant valid and recommended its confirmation, and Congress confirmed grant as recommended, confirmation goes to all land claimed.

Distinguished in Labadie v. United States, 6 Okl. 416, 51 Pac. 671, fact that government issued patent to Osage Indians for lands within reservation does not take reservation out of 25 Stat. 166, punishing cutting of timber thereon.

94 U. S. 619, 24 L. 298, UNITED STATES v. SANTISTEVAN.

Syl. 1 (IX, 165). Same as United States v. Joseph.

Distinguished in Labadie v. United States, 6 Okl. 416, 51 Pac. 571, fact that government issued patent to Osage Indians for lands within reservation does not take reservation out of 25 Stat. 166, punishing cutting of timber thereon.

94 U. S. 621-631, 24 L. 298, EAMES v. HOME INS. CO.

(IX, 165.) Miscellaneous. Cited in In re Leeds Woolen Mills, 129 Fed. 926, where possession of goods obtained from bankruptcy receiver, who had no authority to surrender same, court may, in proceedings to compel him to restore same, determine question of ownership where he claims title.

94 U. S. 631-645, 24 L. 133, COMMISSIONERS OF JOHNSON CO. v. THAYER.

Syl. 5 (IX, 168). Corporation may hold own shares.

Approved in Wisconsin Lumber Co. v. Greene etc. Tel. Co., 127 Iowa, 356, 109 Am. St. Rep. 387, 101 N. W. 744, 69 L. R. A. 968, following rule; Burnes v. Burnes, 137 Fed. 789, 70 C. C. A. 357, upholding purchase of stock under contract to pay in annual installments during life of vendor.

94 U. S. 645-650, 24 L. 302, BOYD v. ALABAMA.

Syl. 1 (IX, 168). Conclusiveness of decree as to validity of statute.

Approved in Knight v. Shelton, 134 Fed. 437, determining validity of amendment to Arkansas constitution.

Syl. 3 (IX, 169). Restraining subsequent legislatures by contract.

Approved in Marrigault v. Springs, 199 U. S. 481, 50 L. 279, 26 Sup. Ct. 127, obligation of agreement to remove existing dam from navigable river not impaired by subsequent statute to subserve drainage

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of lowlands, authorizing construction of dam by same persons making agreement; Chicago v. Gunning System, 214 Ill. 637, 70 Am. St. Rep. 230, 73 N. E. 1039, upholding ordinance regulating billboards.

94 U. S. 650-652, 24 L. 216, LOWE v. WILLIAMS.

Syl. 1 (IX, 170). Removal of suit in appellate court.

Approved in Katz v. Herschel Mfg. Co., 150 Fed. 685, action for unlawful detainer pending in justice court is removable where requisite diversity of citizenship and amount in controversy exist.

94 U. S. 652-660, 24 L. 216, CRIM v. HANDLEY.

Syl. 1 (IX, 170). Enjoining judgments at law.

Approved in Miller v. Margerie, 149 Fed. 698, refusing to set aside Alaska townsite trustee's deed for fraud where facts showing that party prevented by fraud from appearing before trustee and submitting evidence to establish right to enter property not alleged; Brown v. Pegram, 149 Fed. 520, upholding right of judgment debtor to enjoin its collection on allegation of setoffs against beneficial owners who are nonresidents of United States or insolvent; Bailey v. Willeford, 136 Fed. 385, 69 C. C. A. 226, upholding refusal to enjoin enforcement of state judgment on ground that it was procured by fraud and perjury where case heard on merits in state courts; Nelson v. Meehan, 2 Alaska, 493, vacating judgment obtained by perjury where it was affirmed on appeal and pending final disposition of case in district court defendant by affidavit disclosed perjury and moved to vacate; Jarvis v. Martin, 77 Conn. 21, 58 Atl. 15, refusing to set aside judgment striking case from files for failure of plaintiff to appear when his counsel made no motion to restore case because he confused action with another between same parties; McMahen v. Whelan, 44 Or. 406, 75 Pac. 716, judgment for plaintiff in justice's court in forcible entry nor its affirmance on appeal does not bar suit for specific performance of verbal lease and injunction against judgment; Farmers' etc. Warehouse Co. v. Pridemore, 55 W. Va. 463, 47 S. E. 263, refusing to enjoin judgment alleged to have been obtained by perjury on allegation that complainant is now able to prove his defense but does not allege cause of failure of proof.

94 U. S. 672-673, 24 L. 437, GODDARD v. ORDWAY.

Syl. 3 (IX, 172). Supersedeas—Power of lower court over funds.

Approved in Chemung Min. Co. v. Hanley, 11 Idaho, 305, 81 Pac. 619, upholding power of supreme court to appoint receiver to act pending litigation.

Syl. 4 (IX, 173). Appeal—Supersedeas not by virtue of process.

Approved in McCourt v. Singers-Bigger, 150 Fed. 104, following rule.

94 U. S. 673-681, 24 L. 168, CASEY v. GALLI.

Syl. 1 (IX, 173). National banks—Liability of stockholders.

Approved in Christopher v. Norvell, 201 U. S. 222, 50 L. 735, 26 Sup. Ct. 502, coverture does not affect stockholder's liability.

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Syl. 4 (IX, 174). Banks—Conclusiveness of comptroller's certificate.

Approved in Clement v. United States, 149 Fed. 319, certificate of Comptroller of Currency that bank has complied with provisions of statute authorizing extension of corporate existence of banks is conclusive in prosecution against president for violation of national bank act.

Syl. 5 (IX, 174). Stockholder's liability—Estoppel to deny corporation.

Approved in Aldrich v. Bingham, 131 Fed. 366, where state bank stockholder accepted dividends after its reorganization as national bank, he is estopped to deny liability for assessments levied by comptroller because he had not assented to reorganization.

94 U. S. 682-695, 24 L. 219, SCOTLAND CO. v. THOMAS.

Syl. 2 (IX, 176). County railroad subscription—Consolidation.

Approved in Jones v. Missouri-Edison Electric Co., 135 Fed. 157, under Rev. St. Mo. 1899, § 1334, consolidation is valid though one of constituent companies itself created by prior consolidation.

Distinguished in Jones v. Missouri-Edison Electric Co., 144 Fed. 775, upholding suit by minority stockholders to avoid for fraud act of consolidation and to restore to corporation or its stockholders powers and property transferred.

94 U. S. 695-711, 24 L. 238, CAWOOD PATENT.

Syl. 3 (IX, 177). Patent infringement.

Approved in Gunn v. Bridgeport Brass Co., 148 Fed. 242, holding Gunn patent No. 583,227, for system of card records, valid and infringed.

Syl. 4 (IX, 177). Patents—Profits as damages for infringement.

Approved in Doten v. City of Boston, 138 Fed. 408, following rule; Eastern Paper Bag Co. v. Continental Paper Bag Co., 142 Fed. 519, savings by use of infringing device are only profits recoverable where infringing device made and used by defendant but product of machine not improved.

(IX, 177.) Miscellaneous. Cited in Chicago Grain Door Co. v. Chicago etc. R. R. Co., 137 Fed. 105, arguendo.

94 U. S. 718-727, 24 L. 310, CHESAPEAKE ETC. R. R. v. VIRGINIA.

Syl. 2 (IX, 180). Tax exemption—Consolidation of corporations.

Approved in People's Gaslight etc. Co. v. Chicago, 194 U. S. 16, 48 L. 856, 24 Sup. Ct. 520, exemption from state gas price regulation contained in charter does not extend to other companies not having such right when merged with first company under Illinois act of 1897.

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94 U. S. 728-734, 24 L. 245, BLAKE v. ROBERTSON.

Syl. 1 (IX, 180). Patent infringement—Use of equivalents.

Approved in Crown Cork etc. Co. v. Standard Stopper Co., 136 Fed. 207, 69 C. C. A. 519, Painter patent No. 468,258, for bottle-stopper, infringed by device of Patterson patent No. 682,995.

94 U. S. 734-740, 24 L. 136, JEROME v. McCARTER.

Syl. 1 (IX, 182). Foreclosure—Prior mortgagees as parties.

Approved in Boatmen's Bank v. Fritzlin, 135 Fed. 659, 68 C. C. A. 288, following rule.

Syl. 4 (IX, 182). Bankruptcy of mortgagor after filing foreclosure.

Approved in In re Mertens, 144 Fed. 823, where pledgee has converted security into money pursuant to contractual rights, he may prove unsatisfied balance in bankruptcy.

94 U. S. 741-745, 24 L. 190, CORCORAN v. CHESAPEAKE CANAL CO.

Syl. 2 (IX, 184). Making unwilling plaintiffs parties defendants.

Approved in Georgia etc. R. Co. v. Wright, 124 Ga. 603, 53 S. E. 254, where federal judgment rendered for plaintiff and one codefendant obtained severance and appealed and reversed judgment, other defendant is estopped in subsequent state suit against appealing defendant from setting up matter which might have been pleaded in federal suit; Sioux City v. Chicago etc. Ry. Co., 129 Iowa, 702, 106 N. W. 186, arguendo.

Syl. 3 (IX, 185). Cestui bound by decree against trustee.

Approved in In re E. T. Kenney Co., 136 Fed. 455, where creditors assigned claim to committee to buy from receiver property of insolvent and sell it in their interest, beneficial interest of creditors in net proceeds of claim so assigned is not favorable in bankruptcy.

94 U. S. 746-753, 24 L. 222, TATE v. NORTON.

Syl. 4 (IX, 186). Estates allowed claim same as judgment.

Approved in Brock v. Kirkpatrick, 72 S. C. 501, 52 S. E. 596, where judgment obtained on note against executor was allowed as claim against estate and enrolled in probate court as execution issued, it is prima facie evidence in suit by creditor to subject lands of devisees to payment of debt.

94 U. S. 753-762, 24 L. 170, COLLINS v. GILBERT.

Syl. 1 (IX, 186). Note—Bona fide holder from thief.

Approved in In re Troy & Cohoes Shirt Co., 136 Fed. 427, where one discounting notes knew president and treasurer of corporation who made notes were also members of firm for whose accommodation notes made, discounter not charged with notice of their true character.

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Syl. 2 (IX, 186). Bona fide holder of note—Knowledge.

Approved in First Nat. Bank v. Moore, 148 Fed. 957, 958, purchaser of note for value before maturity is not deprived of character of bona fide purchaser by proof that he took with notice of circumstances which would put ordinarily prudent man on inquiry to ascertain facts; Gamble v. Rural Ind. School Dist., 132 Fed. 521, one obtaining bond from prior holder for legal services rendered to full value of bond is bona fide holder, where bond not due and he had no notice of defects.

Syl. 3 (IX, 187). Possession of note payable to bearer.

Approved in Jones v. Stoddard, 8 Idaho, 219, 67 Pac. 651, assignment of mortgage does not make purchaser of note which it secures an assignee; Hillard v. Taylor, 114 La. 893, 38 So. 598, applying rule where ostensible owner fraudulently mortgaged property and negotiated mortgage paper to third person.

Distinguished in Cuyler v. Wallace, 183 N. Y. 300, 76 N. E. 3, where policy insuring son was assigned to father, and after death of latter it is found in son's possession without written reassignment, son not presumed to be bona fide holder.

94 U. S. 762-767, 24 L. 313, FORBES v. GRACEY.

Syl. 1 (IX, 188). Possessory rights of miners—Rules.

Approved in O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 109, on death of locator unpatented mining claims passed to administrator as part of estate and not to heirs as grantees of government; Burns v. Schoenfeld, 1 Cal. App. 124, 81 Pac. 714, arguendo.

Syl. 4 (IX, 189). Mining claim is salable property.

Approved in Worthen v. Sidway, 72 Ark. 225, 79 S. W. 781, following rule; Reed v. Munn, 148 Fed. 757, title of locator of unpatented mining claim passes to purchaser under him who has prior equity over claimant of prior equitable interest; O'Connell v. Pinnacle Gold Min. Co., 140 Fed. 855, possessory right of mining locator who has not applied for patent passes by descent to heirs and may be administered by personal representatives; Cascaden v. Dunbar, 2 Alaska, 411, oral grubstake contract is not within statute of frauds; Copper River Min. Co. v. McClellan, 2 Alaska 143, applying rule in action to establish trust in mining claims based on oral contract of agency; Tyee Consol. Min. Co. v. Langstedt, 1 Alaska, 449, limitations begin to run in favor of adverse possessor of part of mining claim from time of location and not from date of patent.

Distinguished in Topeka etc. Security Co. v. McPherson, 7 Okl. 345, 54 Pac. 493, Okl. St. 1893, c. 70, art. 1, par. 15, undeeded townsite lots in government townsites pending contest in Land Department are not taxable, but improvements thereon are taxable.

94 U. S. 767-772, 24 L. 315, LIPPINCOTT v. MITCHELL.

Syl. 2 (IX, 190). Rule of property binding federal court.

Approved in Yocum v. Parker, 134 Fed. 212, 67 C. C. A. 227, federal court follows latest of conflicting state decisions interpreting local stat-

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utes relating to construction of wills and conveyances; dissenting opinion in James v. Gray, 131 Fed. 413, 65 C. C. A. 385, majority holding loan by wife to husband is provable against his bankrupt estate, irrespective of its enforceability under state law.

(IX, 188.) Miscellaneous. See 97 Am. St. Rep. 42, 47, note.

94 U. S. 773-780, 24 L. 317, HOGAN v. KURTZ.

Syl. 7 (IX, 191). Limitations—Subsequent disability.

Approved in Scallon v. Manhattan Ry. Co., 195 N. Y. 364, 78 N. E. 285, where ancestor had cause of action for damages caused by construction of railway in front of property, limitations not interrupted by his death and supervening disability of infant heirs.

94 U. S. 780-792, 24 L. 139, COCHRANE v. DEENER.

Syl. 2 (IX, 192). Patent for process.

Approved in Universal Brush Co. v. Sonn, 146 Fed. 527, 528, Morrison patent No. 717,014, for method of making brushes, is infringed by method of Sonn patent No. 791,510; American Graphophone Co. v. Universal etc. Mfg. Co., 145 Fed. 638, holding void for anticipation Jones patent No. 688,739, for process for making talking-machine records; Columbia Wire Co. v. Kokoma Steel etc. Co., 143 Fed. 123, 124, holding Bates patent No. 365,723, for wire-barbing machine, infringed by machine of Frederick patent No. 711,303; Johnson v. Foos Mfg. Co., 141 Fed. 84, upholding Johnson patent No. 506,268, for process for separating cotton-seeds and hulls from fiber; Expanded Metal Co. v. Bradford, 136 Fed. 872, upholding Golding patent No. 527,242, for process of making reticulated metal work; Panzl v. Battle Island etc. Co., 132 Fed. 614, upholding Panzl patent No. 644,367, for composition for lining pulp digesters.

Syl. 4 (IX, 192). Patents—Process defined.

Approved in Universal Brush Co. v. Sonn, 146 Fed. 528, Morrison patent No. 717,014, method of making brushes, is infringed by method of Sonn patent No. 791,510; Manhattan etc. Const. Co. v. Heilos-Upton Co., 135 Fed. 788, holding void Baker patent No. 684,340, for regulator for arc lamp circuits.

94 U. S. 801-802, 24 L. 322, EAST LINCOLN v. DAVENPORT.

Syl. 3 (IX, 196). Municipal railroad subscription—Consolidation of railroad.

Approved in Jones v. Missouri-Edison Electric Co., 135 Fed. 157, consolidation of corporations under Rev. St. Mo., 1899, § 1334, is not invalidated by fact that one of constituent corporations was itself created by prior consolidation.

Distinguished in Jones v. Missouri-Edison Electric Co., 144 Fed. 775, minority stockholders may sue to avoid consolidation of corporations wrought by fraud.

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94 U. S. 806-812, 24 L. 324, SULLIVAN v. PORTLAND ETC. R. R.

Syl. 4 (IX, 197). Defense of state claim—Pleading.

Approved in National Cash Register Co. v. Union etc. Mach. Co., 143 Fed. 346, unexplained delay of twelve years in suing for infringement of patent after notice of infringement, when in meantime business of infringer had been transferred to another, is laches; Moore v. Nickey, 133 Fed. 293, 66 C. C. A. 667, dismissing suit to recover mining stock after eight years' delay after demand made; Shea v. Nilima, 133 Fed. 214, 66 C. C. A. 263, defense of laches may be considered by appellate court, though not assigned as error; Patterson v. Hewitt, 11 N. M. 21, 23, 66 Pac. 557, 558, 55 L. R. A. 658, denying relief to claimant for mining location transferred in settlement of conflicting claim.

Syl. 6 (IX, 199). Equity—Laches discountenanced.

Approved in Hall v. Nash, 33 Colo. 507, 81 Pac. 251, applying rule in action by stockholder of mining company to enforce rights in mining lease; Sawyer v. Cook, 188 Mass. 168, 74 N. E. 358, holding holder of legal title barred by laches from requiring trustee to account for profits of land deal.

XCV UNITED STATES.

95 U. S. 1-3, 24 L. 347, PACIFIC R. R. CO. v. KETCHUM.

Syl. 2 (IX, 202). Receiver pending foreclosure appeal.

Approved in Chemung Min. Co. v. Hanley, 11 Idaho, 304, 81 Pac. 619, supreme court may appoint receiver to act pending litigation.

95 U. S. 3-10, 24 L. 591, PHIPPS v. SEDGWICK.

Syl. 5 (IX, 203). Fraudulent conveyance to wife—Personal judgment.

Approved in Sheldon v. Parker, 66 Neb. 626, 627, 92 N. W. 929, following rule.

Distinguished in Sheldon v. Parker, 66 Neb. 634, 95 N. W. 1015, where husband transfers property in fraud of creditors and she sells it to bona fide purchaser, personal judgment may be entered against wife for proceeds of sale.

95 U. S. 10-16, 24 L. 333, SHAW v. BILL.

Syl. 5 (IX, 203). Mortgage of rolling stock—Replacements.

Approved in Hasbrouck v. Rich, 113 Mo. App. 397, 88 S. W. 133, deed of mining company's property authorizing it to dispose of machinery covered thereby which cannot be used, to be replaced by other machinery of equal value, is not void within Rev. St. 1899, § 3397. See 99 Am. St. Rep. 259, note.

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95 U. S. 16-19, 24 L. 346, NEW ORLEANS ETC. BANKING CO. v. MONTGOMERY.

Syl. 2 (IX, 204). Trust deed passes with transfer of note.

Approved in Kirkpatrick v. Eastern M. & E. Co., 135 Fed. 149, where bank loaned money to corporation, taking its note secured by its bonds together with assignment of underwriting agreement, by which subscribers agreed to take bonds and have stock in corporation, to seventy-five per cent of face of bonds, stock certificates passed to bank.

95 U. S. 19-22, 24 L. 369, ADAMS v. NASHVILLE.

Syl. 2 (IX, 205). State tax on national banks.

Approved in Gray v. Logan County, 7 Okl. 323, 54 Pac. 486, national banks realty is taxable, and penalties for nonpayment accumulate while property is in hands of receiver.

95 U. S. 23-33, 24 L. 348, REED v. MERCHANTS' MUT. INSURANCE CO.

Syl. 1 (IX, 206). Varying writing—Surrounding circumstances.

Approved in Guaranty Trust Co. v. Atlantic Coast etc. R. Co., 138 Fed. 521, affirming 135 Fed. 71, where railway mortgage to secure bonds recited form of bonds and declared they were secured by mortgage on all property owned or thereafter acquired, and mortgage limited lien on after-acquired property to liens acquired by lease from other roads, mortgage lien embraced lease by other road organized as holding company; L'Engle v. Scottish Union etc. Ins. Co., 48 Fla. 95, 111 Am. St. Rep. 76, 37 So. 467, 67 L. R. A. 581, construing clause in policy providing for concurrent insurance; Darnell v. Lafferty, 113 Mo. App. 303, 88 S. W. 791, memorandum evidencing sale of personalty is insufficient with regard to description if description is such that, together with surrounding circumstances supplied by parol, subject matter can be identified.

95 U. S. 37-42, 24 L. 335, McMILLAN v. ANDERSON.

Syl. 2 (IX, 207). Notice of tax assessment unnecessary.

Approved in Hodge v. Muscatine County, 196 U. S. 280, 49 L. 481, 25 Sup. Ct. 237, due process of law does not require that as to one carrying on business of selling cigarettes notice be given of assessment of tax imposed by Iowa Code, § 5007; American Smelting etc. Co. v. People, 34 Colo. 249, 82 Pac. 534, upholding Sess. Laws, 1902, p. 74, c. 3, § 66, providing that corporation failing to pay license tax shall forfeit right to do business in state until tax is paid; Newton v. McKay, 130 Iowa, 599, 102 N. W. 828, Code, §§ 2433, 2447, providing for imposition of mulct taxes on liquor sales, imposes tax, and not license, and it is collectible by summary proceedings; People v. Ronner, 185 N. Y. 293, 77 N. E. 1064, upholding Laws 1905, p. 2059, c. 729, imposing tax on real estate mortgages; Whitlock v. Hawkins, 105 Va. 266, 53 S. E. 409, upholding act of 1906, relating to assessment of land and confirming assessments made in compliance with act of 1903. See 104 Am. St. Rep. 314, note.

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Syl. 3 (IX, 208). Taxation—Due process.

Approved in Youst v. Willis, 5 Okl. 416, 49 Pac. 1014, upholding act of 1895, regulating appeals from justices and probate courts and providing for entry of judgment against sureties, as applied to bonds executed prior to act.

Syl. 5 (IX, 209). Tax assessment—Presence of owner unnecessary.

Approved in Hodge v. Muscatine County, 121 Iowa, 490, 104 Am. St. Rep. 304, 96 N. W. 971, 67 L. R. A. 624, upholding Code, § 5007, taxing vendor of cigarettes and buildings used in their manufacture or sale; Taylor v. Crawford, 72 Ohio St. 570, 74 N. E. 1068, 69 L. R. A. 805, upholding 95 Ohio Laws, p. 155, § 3, providing for cleaning and repairing public ditches and watercourses.

Syl. 6 (IX, 209). Recovery of illegal taxes paid—Duress.

Approved in Beebe v. Magoun, 122 Iowa, 96, 101 Am. St. Rep. 259, 97 N. W. 987, arguendo,

95 U. S. 43-48, 24 L. 336, PRATT v. GRAND TRUNK RAILWAY CO.

Syl. 3 (IX, 210). Delivery to carrier at agreed place.

See 97 Am. St. Rep. 98, note,

95 U. S. 58-60, 24 L. 370, McHENRY v. LA SOCIETE FRANCAISE.

Syl. 3 (IX, 212). Foreclosure by bankruptcy assignee in state court.

Approved in Sellers v. Haynes, 163 Ind. 430, 72 N. E. 122, bankruptcy trustee cannot complain if fraudulent character of mortgage given by purchaser from bankrupt to third party.

95 U. S. 68-78, 24 L. 373, EX PARTE EASTON.

Syl. 5 (IX, 213). Maritime contracts include wharfage.

Cited in The Surprise, 129 Fed. 883, 64 C. C. A. 309, arguendo; Contradt v. Miller, 2 Alaska, 439, town council cannot grant franchise to individuals to build wharves in navigable waters abutting on public streets and collect tolls for use of same.

95 U. S. 90-98, 24 L. 341, GOOD v. MARTIN.

Syl. 5 (IX, 218). Indorsement after indorsement by payee.

Cited in Jones v. Stoddart, 8 Idaho, 219, 67 Pac. 651, arguendo.

Syl. 8 (IX, 219). Indorser before payee is joint maker.

Approved in Camp v. First Nat. Bank of Ocala, 44 Fla. 503, 103 Am. St. Rep. 173, 33 South. 242, following rule; Columbia Finance etc. Co. v. Purcell, 146 Fed. 88, one indorsing note in blank at time it is made cannot be made liable on contract written above his indorsement reciting agreement by indorser to pay note according to terms of another agreement; Ex parte Moran, 144 Fed. 604, illegal selection of grand jurors in territorial court is ground for discharge of prisoner on habeas corpus in federal court.

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Syl. 17 (IX, 220). Territorial courts not United States courts.

Approved in Cochran v. United States, 147 Fed. 207, on trial in territorial court of indictment charging offense against laws of United States, questions relating to severance and peremptory challenges are governed by territorial laws; Ex parte Moran, 144 Fed. 598, circuit court of appeals may issue habeas corpus to inquire into power of Oklahoma territorial court to imprison one convicted of capital crime; Wallace v. Adams, 143 Fed. 725, upholding 32 Stat. 641, creating citizenship court empowered to review final judgments of United States courts under 29 Stat. 339, which had been affirmed by supreme court, as against successful litigants who had not procured allotments prior to its passage; Fuller v. Johnson, 8 Okl. 606, 58 Pac. 747, applying rule under Stat. 1890, p. 930, § 2, prescribing limitations in actions on judgments.

Syl. 18 (IX, 220). Exclusion of witnesses in territorial courts.

Approved in Welty v. United States, 14 Okl. 16, 76 Pac. 123, in criminal prosecution in territorial court sitting with powers of federal court, list of jury and witnesses need not be served on defendant before trial.

95 U. S. 104-117, 24 L. 352, NEW JERSEY v. YARD.

Syl. 5 (IX, 224). Revocation of act fixing corporation tax.

Approved in dissenting opinion in Rochester v. Rochester Ry. Co., 182 N. Y. 127, 74 N. E. 962, 70 L. R. A. 773, majority holding immunity from contribution to expense of new pavements conferred by Laws of 1869, p. 54, c. 34, on street railway, was revocable at will of legislature. See 105 Am. St. Rep. 704, note.

Distinguished in New York v. State Board of Tax Commrs., 199 U. S. 43, 50 L. 78, 25 Sup. Ct. 715, special franchise tax imposed by N. Y. Laws, 1899, c. 712, does not impair obligation of contracts by which state granted right to maintain street railway in payment of annual percentage of earnings; Rochester v. Rochester Ry. Co., 182 N. Y. 116, 74 N. E. 958, 70 L. R. A. 773, holding immunity from contribution to expense of new pavements conferred by Laws of 1869, p. 54, c. 34, on street railway was revocable at will of legislature.

95 U. S. 117-143, 24 L. 395, AETNA INSURANCE CO. v. BOON.

Syl. 3 (IX, 225). Bill of exceptions—Trial by court.

Approved in Webb v. National Bank of Republic, 146 Fed. 719, following rule.

Syl. 5 (IX, 225). Findings by court—Amendment.

Approved in Hays v. Philadelphia etc. R. R. Co., 99 Md. 420, 58 Atl 441, verbal order by judge made in private office after discharge of jury for term in absence of clerk or docket, in handing papers to attorney authorizing him to direct clerk to enter on docket "motion for new trial overruled, judgment for defendant, and appeal by plaintiff," is void.

Syl. 11 (IX, 226). Filing findings nunc pro tunc.

Approved in Carbon Co. School District v. Western Tube Co., 13 Wyo. 322, 324, 80 Pac. 157, 158, where findings were duly made and filed

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but by mistake of clerk were not entered in journal, order after judgment entering findings nunc pro tunc, is proper.

Syl. 15 (IX, 226). Proximate cause defined.

Approved in McGill v. Michigan S. S. Co., 144 Fed. 792, where superintendent, on vessel being changed to oil-burner, ordered tank partially filled while men working with candles and explosion occurred, master liable; American Bridge Co. v. Seeds, 144 Fed. 610, holding where bridge workman knocked off platform by reason of being struck by tackle, operated on signal of foreman, master not liable; Demolli v. United States, 144 Fed. 366, one causing obscene matter to be printed in newspaper, knowing paper will be mailed to readers, causes such matter to be deposited in mail within Rev. St. § 3893; Texas & P. Ry. Co. v. Coutourie, 135 Fed. 473, 68 C. C. A. 177, applying rule in action for damages for loss of property by fire while in carrier's possession through failure to protect it; Streeter v. Sanitary Dist. of Chicago, 133 Fed. 126, 66 C. C. A. 190, on trial to circuit court when there were no special findings, rulings requiring weighing of evidence is not reviewable on appeal; Conner v. Manchester Assur. Co., 130 Fed. 746, 70 L. R. A. 106, 65 C. C. A. 127, where fire ordered by supervisors to destroy insects, insurers of grain destroyed thereby are relieved under exemption from loss occasioned by order of civil authority, though fire started on other property; Indianapolis St. Ry. Co. v. Schmidt, 163 Ind. 364, 71 N. E. 202, complaint alleging defendant negligently ran car at dangerous speed into switch, off track and into pole, throwing plaintiff to floor and against stove, sufficiently alleges defendant's negligence was proximate cause of injury; Bowden v. Derby, 99 Me. 213, 58 Atl. 994, where workman injured by fall of derrick boom, proximate cause is for jury; Foley v. McMahon, 114 Mo. App. 444, 90 S. W. 113, where mule driver did not know tug defective and when it broke alighted to repair it and put foot in front of wheel and mules started, crushing foot, master's negligence in providing defective harness not proximate cause of injury; Snyder v. Philadelphia Co., 54 W. Va. 158, 102 Am. St. Rep. 941, 46 S. E. 369, 63 L. R. A. 896, holding well owner liable where he blew it off, frightening horses in highway, and in pulling them up weak line broke, throwing plaintiff from wagon.

95 U. S. 144-149, 24 L. 420, MOVIUS v. ARTHUR.

Syl. 1 (IX, 228). Customs duties—Specific provisions.

Approved in United States v. Boden, 133 Fed. 840, canned pineapples containing only sufficient sugar to flavor, are dutiable under lower rate presented by Act 1897, c. 11, § 1, sched. G, par, 263; Brennan v. United States, 129 Fed. 838, limes in brine are dutiable under Act of 1897, c. 11, § 1, sched. G, par. 266, and not under par. 559, or 241.

95 U. S. 149-157, 24 L. 442, KNOTE v. UNITED STATES.

Syl. 1 (IX, 229). Amnesty and pardon distinguished.

Approved in In re Briggs, 135 N. C. 124, 47 S. E. 405, upholding Code, § 1215, granting pardon to one testifying in gambling prosecution.

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95 U. S. 157-161, 24 L. 422, BROWN v. COUNTY OF BUENA VISTA.

Syl. 4 (IX, 230). Laches independent of limitations.

Approved in Cole v. Birmingham Union Ry. Co., 143 Ala. 435, 39 So. 405, suit by stockholder to set aside sale of corporation's property to another on ground of ultra vires, is barred by laches ten years after transfer and two years after knowledge; Ryason v. Dunten, 164 Ind. 96, 73 N. E. 77, where mother in possession as cotenant with son purchased at mortgage sale and received sheriff's deed, and son for several years after attaining majority failed to assert rights in land, he cannot assert rights as against mother's remote grantee; Patterson v. Hewitt, 11 N. M. 18, 33, 66 Pac. 556, 561, 55 L. R. A. 658, holding eight years' delay in suing to enforce rights under verbal agreement relating to mining claims is laches.

95 U. S. 161-168, 24 L. 403, CONTINENTAL IMPROVEMENT CO. v. STEAD.

Syl. 4 (IX, 234). Care required on crossing railroad.

Approved in Wabash R. Co. v. De Tar, 141 Fed. 934, and Nichols v. Baltimore etc. R. R. Co., 33 Ind. App. 239, 71 N. E. 172, both following rule; Baker v. Philadelphia etc. Ry. Co., 149 Fed. 887, in action for death of locomotive engineer killed in collision, burden is on defendant to show negligence of deceased; Chicago etc. Ry. Co. v. Smith, 141 Fed. 931, applying rule where one injured while walking across tracks in railroad yards; Pittsburgh etc. Ry. Co. v. Reed, 36 Ind. App. 72, 75 N. E. 51, in action for injuries at railroad crossing burden of proving that plaintiff did not stop, look or listen is on defendant; Oklahoma Gas etc. Co. v. Lukert, 16 Okl. 420, 84 Pac. 1084, upholding refusal to direct verdict for defendant in action for death by electrocution where light wires fell onto telephone wires and broke them.

Syl. 5 (IX, 234). Care required at railroad crossings.

Approved in Cooper v. North Carolina R. Co., 140 N. C. 212, 52 S. E. 933, following rule; West v. Northern Pac. Ry. Co., 13 N. D. 228, 100 N. W. 255, holding one approaching railroad crossing in wagon knowing train was approaching and that view was obstructed is negligent for attempting to cross in front of train and not stopping wagon to listen.

95 U. S. 168-170, 24 L. 423, CAIRO ETC. R. R. CO. v. HECHT.

Syl. 2 (IX, 235). Statutes—"Shall" means "may."

Approved in Thompson v. Board Trustees, 144 Cal. 283, 77 Pac. 952, ordinance providing that on petition of ten per cent of voters, trustees "shall" submit proposition to voters, is not mandatory; State ex rel. Dangberg v. Board of County Commrs., 27 Nev. 474, 77 Pac. 987, applying rule in construing Comp. Laws, § 479, relating to petition to vacate public roads; dissenting opinion in United States v. Cornell Steamboat Co., 137 Fed. 461, 69 C. C. A. 603, majority holding where imports while in customs' custody on board vessel were saved from

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destruction salvors were entitled, under Rev. St., § 2984, to salvage from government who was saved from refunding duties.

95 U. S. 183-186, 24 L. 427, PHOENIX INSURANCE CO. v. PECHNER.

Syl. 2 (IX, 238). Removal petition must show grounds.

Approved in Shane v. Butte Elec. Ry. Co., 150 Fed. 812, where removal petition, in connection with record as presented to state court, fails to disclose grounds for removal, federal court, after removal, cannot permit amendment of petition to state grounds inconsistent with original petition; Helena Power etc. Co. v. Spratt, 146 Fed. 313, where record in state proceedings to condemn land shows equitable title is in defendant, who is citizen of state, while legal title is in another defendant, who is citizen of another state, cause is not removable; State ex rel. Corp. Com. v. Southern Ry. Co., 135 N. C. 81, 47 S. E. 232, where complaint by railroad commission to compel railroad to deliver cars of coal on private siding no valuation alleged, removal petition alleging matter in controversy, involving right of defendant to manage its interstate commerce without interference, exceeds $2,000, is insufficient.

95 U. S. 186-187, 24 L. 428, AMORY v. AMORY.

Syl. 3 (IX, 240). Removal—State jurisdiction till petition.

Approved in Illinois Central Ry. Co. v. Jones, 118 Ky. 165, 80 S. W. 485, following rule.

95 U. S. 188-190, 24 L. 493, KERR v. CLAMPITT.

Syl. 1 (IX, 241). Ruling on new trial not reviewable.

Approved in Copper King v. Johnson, 195 U. S. 627, 49 L. 351, 25 Sup. Ct. 793, following rule; Newport etc. Ry. Co. v. Yount, 136 Fed. 590, 69 C. C. A. 363, refusing to review refusal to set aside verdict or grant new trial.

95 U. S. 191-199, 24 L. 468, FABBRI v. MURPHY.

(IX, 24.) Miscellaneous. Cited in American Cigar Co. v. United States, 146 Fed. 488, importation is not complete while goods remain in custody of customs officers.

95 U. S. 200-204, 24 L. 494, PRESTON v. PRESTON.

Syl. 1 (IX, 242). Specific performance—Uncertain contract.

Approved in Marks v. Gates, 2 Alaska, 527, refusing specific performance of contract whereby party agrees to convey to another fifth interest in all property which he may acquire by location, purchase or otherwise in Alaska; Kirkpatrick v. Pettis, 127 Iowa, 612, 103 N. W. 957, refusing specific performance of oral contract to convey land where neither receipt for earnest-money nor evidence showed description of property; Ferguson v. Blackwell, 8 Okl. 495, 58 Pac. 649, refusing specific performance of contract for division of profits of cattle business.

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95 U. S. 204-210, 24 L. 471, BATES v. CLARK.

Syl. 3 (IX, 242). Indian country.

Approved in Brown v. United States, 146 Fed. 977, larceny on reservation in Oklahoma by white is crime against United States cognizable by territorial district court sitting with federal jurisdiction; Hollister v. United States, 145 Fed. 777, holding South Dakota assented to Comp. St. Supp. 1905, p. 719, conferring jurisdiction on federal courts to try offenses committed on Indian reservation in such state; Ex parte Moran, 144 Fed. 602, territorial court has jurisdiction to try prosecution for murder on Indian reservation when Indian title thereto had been extinguished; Herd v. United States, 13 Okl. 516, 75 Pac. 292, upholding jurisdiction of territorial court exercising federal jurisdiction over prosecution of white for offense on Indian reservation; Goodson v. United States, 7 Okl. 123, 131, 54 Pac. 425, 427, upholding jurisdiction of territorial court sitting with powers of federal court over prosecution for adultery committed on Indian reservation by one not an Indian.

Distinguished in Buster v. Wright, 135 Fed. 952, 68 C. C. A. 505, neither Creek agreement of 1901, nor establishment of townsites, nor sale of lots to noncitizens of Creek nation prohibits Interior Department from closing unlawful business of noncitizens who refuse to pay permit tax.

Syl. 4 (IX, 243). Liability of officers for acts.

Approved in Indian Land & Trust Co. v. Shoenfelt, 135 Fed. 486, 68 C. C. A. 196, federal court in Indian territory cannot enjoin Indian agent from threatening to evict lessee; O'Reilly De Camara v. Brooke, 135 Fed. 387, holding military governor of Cuba liable in damages to Spanish subject who was granted perpetual slaughter franchise in Havana, and which governor abolished; Elgin Nat. Watch Co. v. Loveland, 132 Fed. 46, corporation is not indispensable party to suit for unfair competition against individuals, though defendants are charged with having fraudulently assumed corporate name.

95 U. S. 210-214, 24 L. 409, RADICH v. HUTCHINS.

Syl. 2 (IX, 244). Contracts—Duress defined.

Approved in Newhall v. Jordan, 149 Fed. 589, importer entering goods and purchasing internal revenue stamps without protest cannot recover tax, though goods not lawfully taxable; Burnes v. Burnes, 132 Fed. 493, upholding family settlement made under threat by surviving partner to administer estate as survivor unless corporation formed and stock divided; Lippincott v. Supreme Council A. L. H., 130 Fed. 484, where beneficial society illegally reduced payments on certificates and levied assessments on reduced amount, and member tendered assessment at former rate, but on its refusal paid under new rate under protest, he could rescind contract and recover payment

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made prior to change; Foote v. De Poy, 126 Iowa, 372, 106 Am. St. Rep. 365, 102 N. W. 114, 68 L. R. A. 302, where divorced wife, having custody of children, obtained appointment of guardian for him, claiming he was incompetent, and by agreement thereafter proceedings dismissed and he conveyed most of his property for benefit of children, transaction avoidable by his heirs after death; First Nat. Bank v. Sargent, 65 Neb. 607, 91 N. W. 599, 59 L. R. A. 296, where one conveyed land by deed absolute as security for loan by bank and when he was financially embarrassed bank denied his interest and he found advantageous purchaser but bank refused to release unless large bonus paid, payment of bonus was under duress; Kilpatrick v. Germania Life Ins. Co., 183 N. Y. 170, 111 Am. St. Rep. 727, 75 N. E. 1126, 2 L. R. A. (N. S.) 574, where, on default in payment of interest on mortgage, mortgagee sued to foreclose and mortgagor tendered principal and interest and was informed that foreclosure dismissed and mortgagee demanded bonus which mortgage provided in case payment made before maturity, payment of bonus is involuntary.

95 U. S. 214-221, 24 L. 384, ROEMER v. SIMON.

Syl. 5 (IX, 245). Patents—Evidence of prior use—Notice.

Approved in Drewson v. Hartje Paper etc. Co., 131 Fed. 739, 65 C. C. A. 548, in absence of objection, date of invention is presumed to be date of application for patent.

95 U. S. 221-227, 25 L. 355, EX PARTE SOUTH AND NORTH ALABAMA RAILROAD.

Syl. 2 (IX, 246). Cross-bill is auxiliary.

Approved in Blythe Co. v. Bankers' Inv. Co., 147 Cal. 92, 93, 81 Pac. 285, decree pro confesso on cross-bill may be vacated on motion after adjournment of term.

Syl. 4 (IX, 246). Assignor pendente lite may continue suit.

Approved in Sykes v. Beck, 12 N. D. 252, 96 N. W. 846, permitting appeal by original party though he has sold subject matter of action pendente lite.

Syl. 5 (IX, 246). Mandamus to compel allowance of appeal.

See 98 Am. St. Rep. 893, note.

95 U. S. 232-242, 24 L. 443, CHARTER OAK INSURANCE CO. v. RODEL.

Syl. 1 (IX, 246). Insurance—Objection to sufficiency of proofs of loss.

Approved in Aetna Life Ins. Co. v. Milward, 118 Ky. 732, 82 S. W. 368, following rule; Noyes v. Commercial Travelers' etc. Acc. Assn., 190 Mass. 182, 76 N. E. 666, decision of directors of accident insurance policy that proofs of injury are not satisfactory is not conclusive.

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Syl. 3 (IX, 247). Insurance—Sufficiency of proofs of loss.

Approved in Lyon v. United Moderns, 148 Cal. 473, 83 Pac. 806, applying rule in action on mutual benefit certificate.

95 U. S. 242-251, 24 L. 473, LYCOMING ETC. INSURANCE CO. v. HAVEN.

Syl. 7 (IX, 249). Insurance—Unconditional ownership.

Approved in Medley v. German Alliance Ins. Co., 55 W. Va. 364, 47 S. E. 110, clause in policy providing for unconditional and sole ownership not violate because insured had only life estate encumbered by deed of trust.

95 U. S. 252-259, 24 L. 444, MILNER v. MEEK.

Syl. 1 (IX, 249). Bankruptcy assignee's petition to adjust liens.

Distinguished in In re Scherber, 131 Fed. 124, where petition of bankruptcy trustee to recover preference by summary proceedings contained no allegation that respondent's claim was merely colorable and respondent objected to form of proceeding, bankruptcy court could only proceed by plenary suit.

95 U. S. 259-266, 24 L. 495, CENTRAL COLORADO IMP. CO. v. COMMISSIONERS OF PUEBLO CO.

Syl. 1 (IX, 250). Confirmation of grant—Payment of costs—Taxation.

Approved in Delinquent Tax List v. Territory of Arizona, 4 Ariz. 188, 37 Pac. 370, 39 Pac. 328, tax on unconfirmed Mexican grant is valid; Catron v. Laughlin, 11 N. M. 632, 72 Pac. 32, where New Mexico Surveyor General recommended confirmation of Mexican grant without limitation as to quantity, and Congress confirmed it as recommended, title is valid as to all land claimed.

Distinguished in Territory v. Delinquent Taxpayers, 12 N. M. 70, 73 Pac. 624, Mexican grant taxable though grant submitted for confirmation and patent not yet issued.

95 U. S. 269-274, 24 L. 410, INSURANCE CO. v. DUTCHER.

Syl. 2 (IX, 250). Insurance—Receipt of note for premium.

Cited in Union etc. Life Ins. Co. v. Loughmiller, 33 Ind. App. 313, 69 N. E. 265, arguendo.

Syl. 4 (IX, 251). Interpretation of agreement by parties.

Approved in Seymour v. Warren, 179 N. Y. 6, 71 N. E. 261, construing agreement between land owner and real estate broker by which latter agreed to take charge of property.

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95 U. S. 274-279, 24 L. 344, KEYSTONE BRIDGE CO. v. PHOENIX IRON CO.

Syl. 2 (IX, 251). Patentee bound by claim.

Approved in Cortis v. American Street Lamp etc. Co., 145 Fed. 517, Cortis patent No. 613,648, for electric lamp, not infringed by device of Momand patent No. 781,613; Cincinnati Ry. Supply Co. v. American Hoist etc. Co., 143 Fed. 325, holding Crosby patent No. 388,840, for wire rope clamp, limited in view of prior act; Pelton etc. Wheel Co. v. Abner Doble Co., 141 Fed. 664, construing Krase patent No. 633,962, for water-wheel casing; Avery v. J. I. Case Plow Works, 139 Fed. 886, construing Avery patent No. 650,771, for double mold board plow; Jones v. Davis, 138 Fed. 62, 63, 70 C. C. A. 558, construing Lattimore patent No. 415,720, for lantern holder for miners' caps; Lanyon Zinc Co. v. Brown, 129 Fed. 915, 64 C. C. A. 344, holding Brown patent No. 471,264, for ore-roasting furnace, not infringed by device of Cappeau patent No. 691,112.

Distinguished in Benbow-Brammer Mfg. Co. v. Simpson Mfg. Co., 132 Fed. 615, holding Schroeder patent No. 535,465, for washing-machine, infringed.

95 U. S. 279-285, 24 L. 431, UNION PACIFIC R. R. CO. v. STEWART.

Syl. 3 (IX, 253). Appellant must see to proper record.

Approved in In re A. L. Robertshaw Mfg. Co., 135 Fed. 223, where parties to bankruptcy appeal do not agree as to contents of appeal record, it is duty of appellant to file praecipe pointing out specifically what records should be certified.

95 U. S. 289-294, 24 L. 496, BECKWITH v. TALBOT.

Syl. 1 (IX, 254). Statute of frauds—Sufficiency of memorandum.

Approved in Halsell v. Renfrow, 14 Okl. 686, 78 Pac. 121, construing correspondence and telegrams as not constituting sufficient memorandum of agreement to sell land as satisfies statutes of frauds.

95 U. S. 294-296, 24 L. 436, PEARSON v. YEWDALL.

Syl. 3 (IX, 256). Seventh amendment relates to federal courts.

Approved in Tilley v. Cox, 119 Ga. 870, 47 S. E. 221, upholding Civ. Code, 1895, § 5331, authorizing direction of verdict where there is no conflict in evidence.

Syl. 4 (IX, 256). Due process—Condemnation proceedings.

Approved in Youst v. Willis, 5 Okl. 416, 49 Pac. 1014, upholding act of 1895, relating to appeals from justices' courts, and providing for entry of judgment against sureties on appeal bond on motion, as to bond given prior to enactment of statute.

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95 U. S. 297-303, 24 L. 477, EASTERN TRANSPORTATION LINE v. HOPE.

Syl. 2 (IX, 256). Matters of expert evidence.

Approved in Allen v. Field, 130 Fed. 658, 65 C. C. A. 19, admitting expert evidence as to value of release from risk attending full execution of contract broken.

Distinguished in Hamann v. Milwaukee Bridge Co., 127 Wis. 565, 106 N. W. 1086, opinion evidence as to whether particular manner of moving heavy machine from car was proper, is inadmissible.

Syl. 3 (IX, 257). Care required of towboat.

Approved in The Britannia, 148 Fed. 497, holding tug liable where it had but one hawser, which parted twice in calm weather and later parted again in storm and tows lost; Rebstock v. Gilchrist Transp. Co., 132 Fed. 176, where moored vessel was struck by steamer in tow of two tugs by reason of failure of rear tug to properly assist in turning in channel, tug was liable; The W. G. Mason, 131 Fed. 635, holding where steamer in tow of two tugs stranded on side of channel, leading tug at fault for failure to signal; The Inca, 130 Fed. 41, holding tug liable for stranding of tow over obstruction in channel, not known to master of tug but well known to others.

Syl. 6 (IX, 257). Judge's opinion as to amount of damages.

Approved in Pittsburgh Ry. Co. v. Bloomer, 146 Fed. 722, upholding instruction in action against street railway for injury to passenger by being thrown by sudden starting of car while alighting.

95 U. S. 303-316, 24 L. 450, OULD v. WASHINGTON HOSPITAL FOR FOUNDLINGS.

Syl. 6 (IX, 259). Trust to convey to charity—Perpetuity.

Approved in Brigham v. Peter Bent Brigham Hospital, 134 Fed. 522, 52[illegible], 67 C. C. A. 393, where will directed income of residue to be used to pay specific legacies and balance of twenty-five year accumulation added to principal, and charitable corporation formed to which estate to be transferred, gift vested on testator's death; Codman v. Brigham, 187 Mass. 313, 72 N. E. 1009, where will created charitable trust, provision for accumulations valid though requiring fund to be held for period beyond time prescribed by rule against perpetuities.

Syl. 9 (IX, 260). Charitable uses liberally construed.

Approved in Tincher v. Arnold, 147 Fed. 673, where residuary estate devised in trust, accumulations to certain amount to be used for building to be used for educating boys, income from remainder of fund to be used to pay teachers, latter part need not be used exclusively for teachers.

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95 U. S. 316-319, 24 L. 479, HART v. UNITED STATES.

Syl. 1 (IX, 260). United States—Wrongful acts of officers.

Approved in United States v. Guest, 143 Fed. 458, surety on distiller's bond not relieved from liability for tax on spirits lost in distillery warehouse because warehouse was in charge of collector and loss occurred through negligence of custodian; United States v. Ennis, 132 Fed. 135, failure of Treasury Department to withhold part of payment due government contractor on account of claim of United States against him for prior breach of contract does not release sureties from liability for such claim; Christie-Street Com. Co. v. United States, 129 Fed. 509, statements by departmental officers to claimant pending appeal before internal revenue commissioner that claim would be allowed or had been favorably certified, do not estop government so as to avoid statute of limitations.

95 U. S. 319-326, 24 L. 357, SHIELDS v. OHIO.

Syl. 2 (IX, 260). Effect of consolidation of corporations.

Approved in Anderson v. War Eagle etc. Min. Co., 8 Idaho, 803, 72 Pac. 674, following rule; San Antonio Traction Co. v. Altgelt, 200 U. S. 309, 50 L. 494, 26 Sup. Ct. 261, contract exemption from legislative regulation of rates possessed by street railway chartered prior to Texas Const. 1876, Bill of Rights, § 17, is lost by foreclosure sale and acquisition of franchises by new corporation; Walsey v. Chicago etc. Ry. Co., 147 Fed. 614, where railroad formed by consolidation of corporations from Iowa and Illinois, it could not remove suit brought in court of either state; Gladding v. St. Matthews Church, 25 R. I. 634, 105 Am. St. Rep. 904, 57 Atl. 863, 65 L. R. A. 225, where testatrix bequeathed property to church for mutes, but before her death church corporation consolidated with another, though department of consolidated corporation carried on same work as old church, consolidated corporation does not take bequest.

Distinguished in Lee v. Atlantic etc. R. Co., 150 Fed. 790, construing contract between corporations as merger and not consolidation.

Syl. 3 (IX, 262). Consolidation of corporations—Exemptions.

Approved in Rochester v. Rochester Ry. Co., 182 N. Y. 118, 74 N. E. 959, 70 L. R. A. 773, where street railway was by statute exempt from expense of repairing between tracks, exemption did not pass to lessee.

Syl. 5 (IX, 262). Reserved right to amend corporate charter.

Approved in Chicago v. Cicero, 210 Ill. 298, 71 N. E. 359, upholding Hurd's Rev. St. 1901, p. 347, § 26, providing for furnishing of water by city owning its own waterworks to adjacent city not owning own system.

Distinguished in Omaha Water Co. v. City of Omaha, 147 Fed. 68, municipal contract to suspend for twenty-five years power of

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city to regulate water rates in consideration of construction and maintenance of waterworks is not unreasonable.

95 U. S. 326-333, 24 L. 387, GLOBE MUTUAL INSURANCE CO. v. WOLFE.

Syl. 5 (IX, 264). Retention of premiums—Ratification of agent's acts.

Approved in Morgan v. Northwestern Nat. Life Ins. Co., 42 Wash. 14, 84 Pac. 413, following rule.

Syl. 7 (IX, 264). Insurance—Knowledge of agent accepting premiums.

Approved in German-American Ins. Co. v. Yeagley, 163 Ind. 666, 71 N. E. 903, in action on fire policy defended on ground that policy was void because property was encumbered, reply that agent who wrote policy knew of encumbrance was sufficient; Farmers' etc. Ins. Co. v. Jackman, 35 Ind. App. 15, 73 N. E. 735, where insured owned property in fee simple at time of insurance and ratified insurer of transfer to son, in which insured retained life estate, and afterward insurance readjusted and insurer notified of condition of title and insured paid premiums under policy declaring that policy on property not owned in fee simple was void, condition waived; Aetna Life Ins. Co. v. Fallow, 110 Tenn. 733, 735, 77 S. W. 940, where accident policy provided that there should be no insurance unless premiums paid prior to accident, but by agreement between insured and general agent former held premiums until collector called, insurer estopped to deny liability.

Syl. 8 (IX, 265). Insurance—Doctrine of waiver.

Approved in Williams v. Neely, 134 Fed. 10, 69 L. R. A. 232, 67 C. C. A. 171, purchaser for value from creditor of obligation of debtor, who obtains latter's note payable to himself as evidence of obligation, debtor does not waive right to plead defenses available against original obligation; Supreme Lodge K. of H. v. Jones, 35 Ind. App. 129, 69 N. E. 721, applying rule in action as benefit certificate where financial recorder of local lodge accepted payment of assessments past due; Parsons v. Lane, 97 Minn. 105, 106 N. W. 488, applying rule to condition in policy as to title; Collins v. Metropolitan Life Ins. Co., 32 Mont. 343, 345, 108 Am. St. Rep. 578, 80 Pac. 612, 613, where policy provided that forfeitures for nonpayment of premium were waivable only in writing by officer of company, agreement of insured with agent to extend time for payment is not binding on insurer, though other payments had been waived by latter; Thompson v. Travelers' Ins. Co., 13 N. D. 451, 101 N. W. 902, acceptance of first premium by insurer without knowledge of insured's health does not estop it from setting up breach of condition; Deming Inv. Co. v. Shawnee Ins. Co., 16 Okl. 11, 83 Pac. 921, though agent wrote application knowing it misstated facts, insurer not bound

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thereby where it never knew facts and agent not authorized to waive conditions; Aetna Life Ins. Co. v. Fallow, 110 Tenn. 730, 77 S. W. 939, where accident policy provided that there should be no insurance unless premiums paid prior to accident, but by agreement between insured and general agent former held premiums until collector called, insurer estopped to deny liability.

Syl. 9 (IX, 265). When waiver claimable by insured.

Approved in Gish v. Insurance Co. of North America, 16 Okl. 73, 74, 87 Pac. 873, 874, considering question of waiver of iron-safe clause in fire policy; Aetna Life Ins. Co. v. Fallow, 110 Tenn. 739, 77 S. W. 942, applying rule where subagent of general agent of accident company collected policy after maturity.

Syl. 10 (IX, 266). Insurance—Restrictions—Acts of agent.

Distinguished in Medley v. German etc. Ins. Co., 55 W. Va. 351, 47 S. E. 105, restrictions in policy as to authority of agent as to waiver do not apply to conditions relating to inception of policy.

95 U. S. 342-346, 24 L. 412, MERCHANTS' NAT. BANK v. COOK.

Syl. 1 (IX, 267). Bankruptcy—Reasonable cause to believe insolvent.

Approved in Capital Nat. Bank v. Wilkerson, 36 Ind. App. 474, 483, 75 N. E. 839, 842, and Stevenson v. Milliken etc. Co., 99 Me. 327, 59 Atl. 475, both following rule; In re Moody, 134 Fed. 633, where retailer within four months of bankruptcy transferred goods to firm, which paid his debt to bank of which partners were stockholders, and who transferred to him farm, title to which taken in wife's name, transfer was void; Crandall v. Coats, 133 Fed. 969, holding preferred creditor charged with notice of bankrupt's insolvency at time of conveyance; In re Goodhile, 130 Fed. 473, fact that indebtedness of retailer to wholesaler is past due when payment made does not give creditor cause to believe debtor insolvent and that it was intended as preference.

95 U. S. 347-354, 24 L. 596, SESSIONS v. JOHNSON.

Syl. 1 (IX, 267). Judgment against one joint debtor as bar.

Approved in Blythe v. Cordingly, 20 Colo. App. 514, 80 Pac. 497, judgment on firm debt where service is had on less than all of partners bars subsequent action against partners not served.

Syl. 3 (IX, 267). Joinder of wrongdoers.

Approved in Shane v. Butte Elec. Ry. Co., 150 Fed. 809, where complaint in state action states joint cause against nonresident corporation and resident servant, denial of joint negligence in corporation's removal petition is insufficient; Knuth v. Butte Elec. Ry. Co., 148 Fed. 74, refusing removal of action against railway company and servant for joint negligence causing injury, where fraudulent joinder not alleged and proven.

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95 U. S. 360-372, 24 L. 416, CASS COUNTY v. JOHNSTON.

Syl. 1 (IX, 268). Requirement of majority of legal voters.

Approved in Sharp v. George, 5 Ariz. 68, 46 Pac. 213, applying rule in construing Laws 18th Assem. Act No. 32, relating to establishment of union high school; dissenting opinion in Rice v. Palmer, 78 Ark. 453, 96 S. W. 403, majority holding under Kirby's Dig., § 718, majority of electors voting at election necessary to pass constitutional amendment.

Distinguished in Knight v. Shelton, 134 Fed. 427, 433, under Const. Ark., art. 19, § 22, approval of constitutional amendment by majority of electors voting on such proposition is not sufficient unless they constitute majority of those voting at election.

Syl. 2 (IX, 269). Electors not voting presumed to assent.

Approved in Law v. San Francisco, 144 Cal. 395, 77 Pac. 1019, under San Francisco Charter Act 12, § 4, relating to elections for public improvement bonds, favorable two-thirds vote of all votes cast at election is required; Murdock v. Strange, 99 Md. 110, 57 Atl. 630, where on election of city officer by council there was one blank ballot, such ballot cannot be counted in summing up total, majority of which must be received to be elected; dissenting opinion in Rice v. Palmer, 78 Ark. 450, 96 S. W. 401, majority holding under Kirby's Dig., § 718, majority of electors voting at election necessary to pass constitutional amendment.

Syl. 5 (IX, 270). Mandamus—Tax levy to pay bonds.

Approved in Kucera v. West Chicago Park Commrs., 221 Ill. 493, 77 N. E. 914, where bonds issued by town to park commissioners and money went into park treasury, indebtedness was that of park board and not of town, and park board could issue further bonds under Laws 1905, p. 340.

Distinguished in Folsom v. Greenwood Co., 130 Fed. 734, county in South Carolina is not liable on bonds issued by township before county created, where township was formerly part of another county which was dissolved.

95 U. S. 380-390, 24 L. 499, MUTUAL BEN. LIFE INS. CO. v. HIGGINBOTHAM.

Syl. 1 (IX, 271). Life—Representations as to health—Date.

Distinguished in Kerr v. Union Marine Ins. Co., 130 Fed. 418, 64 C. C. A. 617, where in November insured told insurer bark had not sailed, and on December 12th insured instructed broker to procure insurance but did not say she had sailed on December 4th, and policy issued, policy was void.

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Syl. 3 (IX, 272). Insurance—Proofs of death as admissions.

Approved in Aetna Life Ins. Co. v. Milward, 118 Ky. 729, 82 S. W. 367, in action on accident policy verdict of coroner's jury is not admissible on issue of cause of death.

95 U. S. 391-401, 24 L. 481, THOMPSON v. MAXWELL LAND GRANT & R. CO.

Syl. 4 (IX, 273). Conclusiveness of consent decree.

Approved in Harding v. Harding, 198 U. S. 335, 49 L. 1074, 25 Sup. Ct. 679, consent decree for separate maintenance in Illinois suit is res adjudicata on question of desertion and that wife was living apart from husband without her fault.

95 U. S. 407-418, 24 L. 503, UNITED STATES v. GILLIS.

Syl. 2 (IX, 274). Assignment of claims against government.

Approved in Nutt v. Knut, 200 U. S. 20, 50 L. 352, 26 Sup. Ct. 216, illegality of clause in contract for prosecution of claim against United States making payment of compensation for services thereunder a lien on claim or evidence of indebtedness issued therefor, does not invalidate provision for payment for services of percentage of amount allowed; Henningsen v. United States Fidelity etc. Co., 143 Fed. 813, assignment by public contractor of claim against United States for money accruing on building contract is void.

95 U. S. 418-425, 24 L. 437, TURNBULL v. PAYSON.

Syl. 6 (IX, 276). Stockholder on books presumed owner.

Approved in Louisville etc. R. R. Co. v. Hart Co., 116 Ky. 193, 75 S. W. 290, determining time of accrual of interest on stock subscription; Farmers' etc. Nat. Bank v. Mosher, 68 Neb. 729, 100 N. W. 135, determining ownership of stock pledged where it had been garnisheed for debt of pledgor.

Distinguished in Chesapeake etc. Ry. Co. v. Deepwater Ry. Co., 57 W. Va. 679, 680, 50 S. E. 906, books of private corporation are inadmissible in its favor in action by stranger respecting title to property to prove that acts therein recited were performed at time and in manner therein stated.

95 U. S. 425-433, 24 L. 453, NEW YORK LIFE INS. CO. v. DAVIS.

Syl. 1 (IX, 277). Insurance—Place of payment of premiums.

Approved in Monahan v. Mutual Ins. Co., 103 Md. 159, 63 Atl. 213, 5 L. R. A. (N. S.) 759, where life policy provided that it should be void in case insurer had other policy on same life and it received premiums for same years, it could not deny validity of second policy because of other policy not discovered on account of insurer's system of bookkeeping.

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95 U. S. 439-443, 24 L. 506, BALTIMORE & POTOMAC R. R. CO. v. JONES.

Syl. 1 (IX, 279). Negligence defined.

Approved in Morris v. Florida Central etc. R. R. Co., 43 Fla. 25, 29 So. 545, construing Laws 1891, c. 4071, relating to care required of railroads; Fuller v. Atlantic Coast Line R. Co., 140 N. C. 484, 53 S. E. 298, in action for injury to horse which caught cold while kept in car at night, instruction that if carrier had stables and knew it could not forward horse and kept it in car, it was negligence, is erroneous; Turrentine v. Wellington, 136 N. C. 312, 48 S. E. 740, applying rule where servant engaged in blasting injured by rock rolling down hill; Klenk v. Oregon etc. R. R. Co., 27 Utah, 431, 76 Pac. 215, applying rule where brakeman pushed trespasser off train while it was going at over twelve miles per hour; Mason v. Post, 105 Va. 501, 54 S. E. 313, holding motorman negligent where he had right of way and saw oncoming car leave only turnout but he persisted in going ahead; Lopes v. Sahuque, 114 La. 1011, 38 So. 813, arguendo.

Syl. 4 (IX, 282). Negligence—Laborer riding on locomotive.

Approved in Williams v. Choctaw etc. R. Co., 149 Fed. 107, foreman of switching crew working with engine in yard and injured by slipping off of defective footboard of engine, is contributory negligence; Tower Lumber Co. v. Brandvold, 141 Fed. 922, holding employee of lumber company riding on logging car instead of on flat car with other men guilty of contributory negligence though foreman permitted him to ride there; Chicago Great Western Ry. Co. v. Crotty, 141 Fed. 916, applying rule where brakeman participated in staking of car; Demko v. Carbon Hill Coal Co., 136 Fed. 163, 69 C. C. A. 74, brakeman on logging road riding on floor of rear of engine instead of in cab is guilty of contributory negligence; Radley v. Columbia Ry. Co., 44 Or. 345, 75 Pac. 217, passenger riding on engine of freight train at direction of engineer instead of in caboose is guilty of contributory negligence; Benson v. New York etc. Ry. Co., 26 R. I. 407, 59 Atl. 80, holding brakeman running along edge of roof of car instead of using running board is negligent if he falls into opening cut in roof for ladder; Kansas City etc. R. Co. v. Williford, 115 Tenn. 116, 88 S. W. 180, one riding on footboard at rear of switch engine with knowledge of foreman is contributorily negligent where he was killed by collision though engine running at unlawful speed; dissenting opinion in Milbourne v. Arnold Power etc. Co., 140 Mich. 325, 327, 330, 103 N. W. 825, 827, 70 L. R. A. 600, majority holding employee not negligent where he sits outside of house-car to watch tools and on being warned by boss so stated and latter replied, "All right."

Distinguished in Kane v. Erie R. Co., 142 Fed. 689, fireman killed by collision with another engine not guilty of contributory negli-

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gence because he was on running-board cleaning headlight while engine was slowly backing; Ft. Wayne Traction Co. v. Hardendorf, 164 Ind. 407, 72 N. E. 594, passenger on crowded street-car standing on running-board is not contributory negligent where conductor authorizes him to stand there; Milbourne v. Arnold Power etc. Co., 140 Mich. 322, 103 N. W. 824, 70 L. R. A. 600, where employee of electric railway took seat outside of house-car to watch tools, and on being cautioned by boss, so stated and latter said, "All right," employee not negligent; Dunphy v. St. Joseph Stockyards Co., 118 Mo. App. 519, 95 S. W. 305, servant injured by derailment of switch-engine while riding on front, seated on drawbar with one foot on footboard, instead of standing on footboard, is not negligent.

Syl. 5 (IX, 283). Contributory negligence bars recovery.

Approved in Crookston Lumber Co. v. Boutin, 149 Fed. 685, holding sawmill employee guilty of contributory negligence.

95 U. S. 444-458, 24 L. 360, WILLIAMS v. MORRIS.

Syl. 2 (IX, 284). Tenant estopped to deny landlord's title.

Approved in First Congregational Church v. Terry, 130 Iowa, 518, 107 N. W. 307, wife of life tenant occupying premises with husband as homestead cannot obtain valid tax title as against remainderman.

Syl. 3 (IX, 284). Statute of frauds—Sufficiency of memorandum.

Approved in Kane v. Luckman, 131 Fed. 618, refusing specific performance of oral contract for purchase of cows in exchange for farm; Rosenwald v. Middlebrook, 188 Mo. 94, 86 S. W. 211, applying rule to parol contract to will to plaintiff all decedent's property in consideration of services to be rendered; Hall v. Misenheimer, 137 N. C. 188, 107 Am. St. Rep. 474, 49 S. E. 106, memorandum of contract for sale of land not good as against vendee unless it shows price to be paid.

95 U. S. 459-465, 24 L. 525, POUND v. TURCK.

Syl. 1 (IX, 285). Commerce—State regulation.

Approved in United States v. Union Bridge Co., 143 Fed. 392, upholding 30 Stat. 1153, requiring alteration of bridges over navigable waters on determination of Secretary of War that they obstruct navigation; Kansas City etc. R. R. Co. v. Wiygul, 82 Miss. 231, 33 So. 967, 61 L. R. A. 578, upholding state's right to authorize bridge over navigable stream.

Syl. 2 (IX, 287). Commerce—State authorization of boom on river.

Approved in Chicago etc. Ry. Co. v. Illinois, 200 U. S. 592, 50 L. 609, 26 Sup. Ct. 341, upholding imposition on railroad of entire cost of removing and rebuilding bridge made necessary by improvement

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of channel by drainage commissioners acting under Illinois drainage act of 1885; Marrigault v. Springs, 199 U. S. 478, 50 L. 278, 26 Sup. Ct. 127, statute may authorize construction of dam across navigable river to drain lowlands.

95 U. S. 465-474, 24 L. 527, HANNIBAL ETC. R. R. CO. v. HUSEN.

Syl. 1 (IX, 287). Interstate commerce—Exclusive congressional regulation.

Approved in Hadley Dean Plate Glass Co. v. Highland Glass Co., 143 Fed. 244, Missouri anti-trust act does not apply to contract for sale of goods to be manufactured by vendor in another state and delivered to vendee in Missouri; Kipp v. Gates, 126 Wis. 572, 105 N. W. 949, arguendo.

Syl. 4 (IX, 289). Scope of police power.

Approved in Chicago etc. Ry. Co. v. Illinois, 200 U. S. 584, 592, 50 L. 606, 609, 26 Sup. Ct. 341, upholding imposition on railroad of entire cost of removing and rebuilding bridge made necessary by improvement of channel by drainage commissioners acting under Illinois drainage act of 1885; California Reduction Co. v. Sanitary Reduction Works, 199 U. S. 319, 50 L. 210, 26 Sup. Ct. 100, upholding city ordinance requiring all garbage to be delivered at specified crematory to be there cremated at expense of remover; Jacobson v. Massachusetts, 197 U. S. 25, 26, 28, 49 L. 649, 650, 25 Sup. Ct. 358, upholding Massachusetts compulsory vaccination act; State v. Durein, 70 Kan. 22, 80 Pac. 990, upholding anti-liquor law; State v. Brown, 37 Wash. 100, 107 Am. St. Rep. 798, 79 Pac. 636, 68 L. R. A. 889, holding void Laws 1891, p. 314, requiring examination by and license for dental board before one may run, own or manage dental office, as distinguished from actual practice of dentistry. See 103 Am. St. Rep. 868, 869, 871, notes.

Syl. 7 (IX, 292). Commerce—Prohibiting importation of cattle.

Approved in Pabst Brewing Co. v. Crenshaw, 198 U. S. 38, 49 L. 934, 25 Sup. Ct. 552, upholding Missouri statute imposing inspection fee on malt liquor shipped from other states and held there for sale and consumption. See, notes, 97 Am. St. Rep. 243, 246, 98 Am. St. Rep. 606.

Syl. 8 (IX, 293). Commerce—Police power.

Approved in Pabst Brewing Co. v. Crenshaw, 198 U. S. 39, 49 L. 934, 25 Sup. Ct. 552, upholding Missouri statute imposing inspection fee on malt liquor shipped from other states and held there for sale and consumption; McDonald v. Southern Exp. Co., 134 Fed. 288, holding void S. C. act of 1904, prohibiting transportation of shad outside of state.

Distinguished in Ex parte Boyce, 27 Nev. 349, 75 Pac. 10, 65 L. R. A. 47, upholding act of 1903, providing for eight-hour work day in mines, smelters and ore-mills.

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Syl. 6 (IX, 291). Statutes—Effect determines purport.

Approved in Northern Securities Co. v. United States, 193 U. S. 336, 48 L. 700, 24 Sup. Ct. 436, combination of stockholders in competing interstate railroads to form stockholding corporation which should acquire, in exchange for own stock, controlling interest in stock of each railroad, violates anti-trust act of 1890.

(IX, 287.) Miscellaneous. Cited in Christensen v. Metropolitan St. Ry. Co., 137 Fed. 712, 70 C. C. A. 657, miscited.

95 U. S. 474-485, 24 L. 508, BROWN v. SPOFFORD.

Union Nat. Bank v. Neill, 149 Fed. 714, where note presented for discount was signed on face by three persons, fact that name of partnership subsequently adjudged bankrupt appeared as second signer was not notice to discounter that firm signed only as surety for first signer.

Syl. 2 (IX, 294). Varying notes by parol.

Approved in Farnham Co. v. Southeastern Const. Co., 144 Fed. 990, in action on written contract, contemporaneous verbal agreement adding term to contract and alleging its breach by plaintiff is no defense; Payne v. Mutual Life Ins. Co., 141 Fed. 345, contemporaneous parol agreement that note need not be paid does not affect binding effect of note; Earle v. Enos, 130 Fed. 470, parol agreement by bank made at time of delivery of accommodation note and its discount by bank that it would not look to maker but solely to one for whose accommodation made, and that it would apply thereon collateral security, is no defense.

Syl. 8 (IX, 295). One appeal from two judgments.

Approved in Griswold v. Bender, 27 Nev. 377, 75 Pac. 162, appeal from order rejecting claim against estate, from order dismissing suit of appellant against estate as represented by attorneys ad litem and sole heir, and from order dismissing suit against administrator, with only one $300 undertaking, dismissed for misjoinder.

95 U. S. 485-517, 24 L. 547, HALL v. DE CUIR.

Syl. 2 (IX, 295). Commerce—Equal privileges to passengers.

Approved in Globe Elevator Co. v. Andrew, 144 Fed. 882, 883, holding void Wis. Laws 1905, p. 37, c. 19, as amended, providing for grading and weighing of grain at Superior in accordance with grades so established; Kavanaugh v. Southern Ry. Co., 120 Ga. 63, 47 S. E. 527, upholding Civ. Code, 1895, § 2298, making connecting roads responsible only until delivery to next road, and that last company receiving goods in good order shall be liable to consignee for damage; Hart v. State, 100 Md. 606, 608, 609, 610, 611, 612, 613, 614, 60 Atl. 460, 461, 462, 463, Acts 1904, p. 186, c. 109, requiring separate coaches for whites and blacks and making it penal to refuse

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to occupy car assigned by conductor is void as to interstate passengers but valid as to local.

Distinguished in United States Express Co. v. State, 164 Ind. 206, 73 N. E. 105, upholding Burns' Ann. St. 1901, § 3312a, requiring express companies to deliver packages to persons to whom same are directed within limit of cities having specified population.

Syl. 3 (IX, 298). Interstate commerce untrammeled.

Approved in Southern Ry. Co. v. Greensboro etc. Coal Co., 134 Fed. 91, order of state corporation commission directing railroad to place cars loaded with coal shipped from another state on certain tracks for unloading is void.

Syl. 4 (IX, 298). Equality of rights to negro passengers.

Approved in Board of Education of Kingfisher v. County Commrs., 14 Okl. 332, 78 Pac. 458, upholding Act 1901, p. 205, requiring creation of school fund for erection of schools for blacks.

95 U. S. 517-527, 24 L. 440, BEECHER v. WETHERBY.

Syl. 2 (IX, 299). Grants to states—Indians' possession.

Approved in Morris v. Bean, 146 Fed. 432, determining riparian rights of persons acquiring land in Crow Indian Reservation; United States v. Tully, 140 Fed. 904, holding lands occupied but not legally reserved for military post not within exclusive federal jurisdiction under Montana constitution; State v. Jennings, 47 Fla. 325, 35 So. 995, congressional acts of 1850 and 1857, relating to swamp lands, do not apply to sixteenth sections granted to Florida by act of 1845.

95 U. S. 551-557, 24 L. 456, MORROW v. WHITNEY.

Syl. 1 (IX, 301). Confirmation passes government's title.

Approved in Gavigan v. Crary, 2 Alaska, 382, where public land set apart for military purposes by War Department, and it is fitted up for such purposes, and military remains in possession until formal abandonment by notice, it was military reservation.

Syl. 4 (IX, 302). Military occupation prior to confirmation.

Approved in Gavigan v. Crary, 2 Alaska, 381, where public land set apart by War Department for military purposes, and it is fitted up for such purposes and military remains in possession until formal abandonment by notice, it was military reservation.

95 U. S. 557-559, 24 L. 490, WEST ST. LOUIS SAV. BANK v. SHAWNEE COUNTY BANK.

Syl. 2 (IX, 302). Banks—Accommodation indorsement by cashier.

Approved in First Nat Bank v. Anderson, 141 Fed. 928, where national bank cashier acting as plaintiff's agent made loan to third party, taking note therefor payable to bank which indorsed it to plain-

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tiff without consideration, latter could not recover from bank; German Sav. Bank v. Des Moines Nat. Bank, 122 Iowa, 741, 98 N. W. 607, resolution of bank directors authorizing manager to make loans to members of board on their indorsements does not make legal particular loan to officer; Hier v. Miller, 68 Kan. 264, 75 Pac. 78, 63 L. R. A. 952, where bank cashier pays debts by entering amount thereof as credit on passbook of creditor, and permits him to check out, bank may recover of creditor; Northwestern etc. Ins. Co. v. Lough, 13 N. D. 603, 102 N. W. 160, deed executed by cashier of state bank to himself individually is void in absence of affirmative evidence of authority; In re Troy & Cohoes Shirt Co., 136 Fed. 427, arguendo.

95 U. S. 576-579, 24 L. 391, UNION PACIFIC R. R. CO. v. DURANT.

Syl. 3 (IX, 305). Conveyance to one as "trustee"—Notice.

Approved in Sternfels v. Watson, 139 Fed. 507, following rule; Johnson v. Amberson, 140 Ala. 348, 37 So. 275, applying rule where stock certificate issued to one as trustee.

Syl. 4 (IX, 305). Trustee estopped to deny beneficiary's title.

Approved in Patterson v. Hewitt, 11 N. M. 42, 66 Pac. 565, 55 L. R. A. 658, statute of limitations does not govern question of laches in seeking to enforce trust.

95 U. S. 591-599, 24 L. 458, GIVEN v. HILTON.

Syl. 1 (IX, 306). Wills—Construction to prevent intestacy.

Approved in Durboraw v. Durboraw, 67 Kan. 143, 72 Pac. 567, will devising all property to grandson and then giving particular description passes after-acquired property.

Distinguished in Gallagher v. McKeague, 125 Wis. 119, 110 Am. St. Rep. 821, 103 N. W. 234, where will disposed of all realty and made different bequests of personalty and then bequeathed all household furniture and effects, words "and effects" did not pass personalty not specifically bequeathed.

Syl. 3 (IX, 306). Wills—Particular directions.

Approved in Logan v. Cassidy, 71 S. C. 205, 50 S. E. 804, applying rule in construing residuary clause and specific bequests.

Syl. 7 (IX, 307). Wills—Specific enumeration.

Approved in Lindeke v. Associates Realty Co., 146 Fed. 638, construing lease of realty as not limiting lessor's right of forfeiture to default in payment of rent, but extended to default in covenant to build.

95 U. S. 600-618, 24 L. 461, THE WANATA.

Syl. 2 (IX, 307). Collision—Liability of stipulators.

Approved in The Southwark, 129 Fed. 171, 172, 173, where claimant of ship contests suit in rem to recover damages for breach of

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contract, decree must be entered against stipulators to extent of contract liability and against claimant for balance of interest and costs.

Syl. 10 (IX, 309). Admiralty appeal carries whole fund.

Approved in Perriam v. Pacific Coast Co., 133 Fed. 144, 66 C. C. A. 206, sureties on stipulation in admiralty for release of libeled vessel need not be joined in appeal by claimant though decree is joint in form against claimant and sureties.

95 U. S. 628-637, 24 L. 365, TERRY v. ANDERSON.

Syl. 1 (IX, 310). Banks—Stockholder's liability.

Approved in Chilberg v. Siebenbaum, 41 Wash. 666, 667, 670, 84 Pac. 599, 600, 601, applying rule and holding insolvent corporation's creditor need not first obtain judgment against corporation before suing to enforce unpaid stock subscriptions; Bennett v. Thorne, 36 Wash. 265, 270, 78 Pac. 940, 941, 68 L. R. A. 113, action against stockholders for additional liability accrues on insolvency of bank and is enforceable within six years.

Syl. 3 (IX, 310). Change in limitation statutes.

Approved in Soper v. Lawrence Bros. Co., 201 U. S. 369, 370, 50 L. 791, 26 Sup. Ct. 473, upholding Me. Pub. Laws 1895, c. 162, barring action by former owner to recover wild land adversely held unless commenced within twenty years or before January 1, 1900; Arbuckle v. Kelley, 144 Fed. 278, upholding Ark. Acts 1899, p. 117, providing that uninclosed lands deemed in possession of one paying taxes for seven successive years, not less than three payments to be subsequent to passage of act; Schauble v. Schulz, 137 Fed. 392, 393, 69 C. C. A. 581, upholding Rev. Codes N. D. 1899, § 3491a, providing for creation of title by adverse possession of ten years as against one who at time of act had failed for nine years to assert title; Lamb v. Powder River etc. Stock Co., 132 Fed. 438, 439, 67 L. R. A. 558, 65 C. C. A. 570, holding void Colo. Sess. Laws 1895, § 239, as amended in 1899, prescribing limitations on action on foreign judgments; Fitzgerald v. Scovil Mfg. Co., 77 Conn. 529, 60 Atl. 133, upholding Gen. St. 1902, § 1119, prescribing one year limitation for personal injury actions against corporations as applied to existing rights of action; Wooster v. Bateman, 126 Iowa, 554, 102 N. W. 522, upholding Acts 29th Gen. Assem., p. 103, c. 137, prescribing limitations on actions on judgments; Semer v. Auditor General, 133 Mich. 576, 95 N. W. 734. Acts 1899, No. 107, § 131, prescribing six months' limitation on actions against homestead by persons claiming under government title, bars action previously accrued not brought within six months after act took effect; State Land Commr. v. Auditor General, 131 Mich. 153, 91 N. W. 155, upholding Pub. Acts 1899, No. 107, providing that suits to set aside title of homesteader of state tax lands must be commenced within six months of passage of act; Allen v. Peterson,

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38 Wash. 603, 80 Pac. 851, act of 1899, amending Laws 1897, p. 136, so as to permit tax foreclosure proceedings after three years from delinquency, is valid as applied to taxes delinquent at date of its passage; Hoffmann v. Milwaukee etc. Light Co., 127 Wis. 83, 106 N. W. 810, upholding Laws 1897, p. 678, providing that no action for personal injury is maintainable unless notice served on person liable within one year after injury.

Syl. 4 (IX, 311). Change of remedy or forms of action.

Approved in People v. Johnson, 185 N. Y. 229, 77 N. E. 1167, upholding Code Civ. Proc., § 392, authorizing admission of statement of child under twelve, where court was of opinion that child did not understand nature of oath, but was intelligent enough to justify reception of statement.

Syl. 5 (IX, 312). Change in limitation statutes—Reasonable time.

Approved in Lamb v. Powder River etc. Stock Co., 132 Fed. 441, 67 L. R. A. 558, 65 C. C. A. 570, holding void Colo. Sess. Laws 1895, p. 239, as amended in 1899, prescribing limitations on actions on foreign judgments; Ross v. Royal, 77 Ark. 325, 91 S. W. 178, Sand. & H. Dig., § 4819, requiring actions for recovery of lands sold for taxes to be brought within two years, applies to tax deed based on void tax sale. See 111 Am. St. Rep. 459, note.

95 U. S. 644-655, 24 L. 521, NEW ORLEANS v. CLARK.

Syl. 3 (IX, 314). Authorizing payment of claim against city.

Approved in Merchants' Nat. Bank v. East Grand Forks, 94 Minn. 250, 102 N. W. 704, upholding Laws 1903, p. 695, c. 382, § 9, validating municipal improvement warrants; State v. Gunn, 92 Minn. 442, 100 N. W. 99, upholding Laws 1901, p. 253, c. 181, legalizing county orders issued under Laws 1895, c. 302, which had been declared void, and authorizing county commissioners to provide for their payment; City of Guthrie v. Territory, 1 Okl. 197, 31 Pac. 193, 11 L. R. A. 418, upholding legislative power to provide for payment by village corporation which succeeds provisional municipal organization of debts contracted by latter.

Syl. 4 (IX, 315). Liabilities on annexation of municipalities.

Approved in Board Co. Commrs. Greer Co. v. Clarke, 12 Okl. 212, 70 Pac. 211, where municipal corporation dissolved and new corporation created embracing same territory, and holding taxable property of former, it is liable for valid debts of former.

Syl. 5 (IX, 315). Extent of state taxation.

Approved in Horton v. City of Newport, 27 R. I. 288, 61 Atl. 761, upholding Laws 1900-01, p. 110, c. 804, § 9, requiring payment of salaries of Newport police commissioners from city funds.

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Syl. 6 (IX, 315). Legislature may change city's powers.

Approved in Worcester v. Worcester etc. St. Ry. Co., 196 U. S. 549, 49 L. 595, 25 Sup. Ct. 327, city cannot set up obligation clause against abrogation, by statute, with consent of street railway, of contract between company and city with reference to paving streets; City of Guthrie v. New Vienna Bank, 4 Okl. 197, 38 Pac. 5, and City of Guthrie v. Territory, 1 Okl. 193, 31 Pac. 192, 11 L. R. A. 418, both upholding legislative power to provide for payment by village corporation which succeeds provisional municipal organization of debts contracted by latter.

Syl. 8 (IX, 316). Retroactive—Requiring payment of equitable claim.

Approved in School Dist. No. 1 v. School Dist. No. 7, 33 Colo. 47, 78 Pac. 691, upholding Sess. Laws 1901, pp. 133, 138, as amended in 1903, relating to apportionment of property of certain school district; State v. Aberdeen, 34 Wash. 68, 74 Pac. 1024, upholding Sess. Laws 1903, p. 26, c. 24, § 1, declaring that state not barred by limitations even under existing statutes, as applied to action by state to recover proportion of liquor licenses received by town.

95 U. S. 655-660, 24 L. 535, GRAND TRUNK RAILWAY v. STEVENS.

Syl. 4 (IX, 316). Carriers—Stipulation for exemption from negligence.

Approved in Nickles v. Seaboard etc. Ry., 74 S. C. 133, 135, 136, 54 S. E. 265, 266, 267, applying rule where husband agreed to go to certain point to testify for railroad if pass given for himself and wife, and wife injured; McNeill v. Durham etc. R. Co., 135 N. C. 704, 47 S. E. 773, 67 L. R. A. 227, passenger injured while riding on pass with conditions printed on back, which violated statute, may recover therefor; Sprigg v. Rutland R. R. Co., 77 Vt. 357, 60 Atl. 146, carrier cannot relieve itself by stipulation in contract from negligence resulting in injuires to caretaker of cattle riding on drover's pass.

95 U. S. 665-669, 24 L. 523, CHUBB v. UPTON.

Syl. 1 (IX, 318). Estoppel to deny validity of incorporation.

Approved in Reid v. Detroit Ideal Paint Co., 132 Mich. 530, 94 N. W. 4, upholding agreement whereby creditor of corporation agrees to take new stock for claim, on condition stock shall be increased in certain amount, of which increase specified third party is to take balance.

Syl. 4 (IX, 319). Liability for unpaid stock balance.

Approved in In re Remington etc. Motor Co., 139 Fed. 776, where manufacturing corporation contracted with board of trade to sell it shares at less than par and to get free site for buildings, and fully

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paid-up certificates issued, neither board nor its purchasers liable to further assessments.

95 U. S. 670-673, 24 L. 538, UNITED STATES v. FOX.

Syl. 3 (IX, 320). Bankruptcy—Punishment of violations.

Approved in Curley v. United States, 130 Fed. 11, 64 C. C. A. 369, construing term "defraud" in Rev. St., § 5440, punishing conspiracy to defraud United States.

95 U. S. 673-679, 24 L. 563, FIRST NATIONAL BANK v. HARTFORD FIRE INS. CO.

Syl. 2 (IX, 320). Insurance—Unintentional overvaluation in application.

Approved in Logan v. Provident Sav. Life Assur. Soc., 57 W. Va. 389, 50 S. E. 531, applying rule to answers to questions relating to health of assured.

Syl. 3 (IX, 321). Insurance policy construed against insurer.

Approved in Mutual etc. Ins. Co. v. Doblin, 137 Fed. 554, 70 C. C. A. 134, where application for life policy requested answer as to other life insurance which was given, further question as to other insurance which was answered in negative did not call for disclosure of accident policy; Taylor v. Provident etc. Assur. Soc., 134 Fed. 934, affirmed in Provident etc. Assur. Soc. v. Taylor, 142 Fed. 713, holding where policy gave insured thirty days' grace in payment of premium, notice of maturity of premium reciting that unless premium paid before due date policy would be forfeited did not deprive insured of grace; American Bonding Co. v. Spokane Building etc. Co., 130 Fed. 742, 65 C. C. A. 121, construing statement that employee had not, to knowledge of employer, been defaulter, as not warranty so as to avoid fidelity bond; O'Connor v. Grand Lodge A. O. U. W., 146 Cal. 491, 80 Pac. 690, and Logsden v. Supreme Lodge, 34 Wash. 673, 76 Pac. 294, both applying rule to benefit insurance; German-American Ins. Co. v. Yeagley, 163 Ind. 659, 71 N. E. 900, where insurer issued policy and retained premium with knowledge through agent that property encumbered, it waived conditions avoiding policy if property encumbered and requiring indorsement of waiver on policy; Champion Ice Mfg. Co. v. American Bonding etc. Co., 115 Ky. 872, 103 Am. St. Rep. 356, 75 S. W. 199, fidelity bond against dishonesty of bookkeeper covers loss sustained by raising checks; Rayburn v. Pennsylvania Casualty Co., 138 N. C. 382, 107 Am. St. Rep. 548, 50 S. E. 763, accident policy insuring for one year commencing October 23, 1901, and ending October 23, 1902, begins and ends on such days, though not delivered; Woodmen of the World v. Gilliland, 11 Okl. 404, 67 Pac. 491, construing benefit society's constitution providing for forfeiture of certificate if member become intemperate or use drugs so as to impair health or die from disease resulting from intemperate or immoral habits; Stinchcombe v. New York Life Ins. Co., 46 Or. 322, 80 Pac.

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215, where policy became effective July 24, 1894, and two years' premium paid, and insured died July 3, 1896, without having paid premium which by policy was payable May 5, 1896, the time of application, forfeiture not effected as to term for which premium paid until July 25, 1896; Tucker v. Colonial Fire Ins. Co., 58 W. Va. 36, 51 S. E. 88, where policy running for one year requires insured to take inventory at least once a year, assured has one year from date of policy to make inventory; dissenting opinion in Atlas Red. Co. v. New Zealand Ins. Co., 138 Fed. 511, majority construing "loss payable" indorsement on policy; Pacific Mutual Life Ins. Co. v. Galbraith, 115 Tenn. 483, 91 S. W. 207, arguendo. See 98 Am. St. Rep. 845, note.

95 U. S. 679-694, 24 L. 558, FARRINGTON v. TENNESSEE.

Syl. 5 (IX, 325). Taxation—Capital stock and shares.

Approved in Powers v. Detroit etc. Ry. Co., 201 U. S. 560, 50 L. 866, 26 Sup. Ct. 556, Mich. Laws 1855, p. 305, § 9, providing that street railway shall pay annual tax on its capital stock in lieu of other taxes, created contract between state and railway; Wilkens Co. v. Baltimore, 103 Md. 313, 63 Atl. 565, upholding assessment of corporation's personalty permanently located in state, though shares of stock held by residents also taxed.

Syl. 6 (IX, 326). Capital stock is trust fund.

Approved in Scottish Union etc. Ins. Co. v. Bowland, 196 U. S. 626, 49 L. 626, 25 Sup. Ct. 345, bonds in which foreign insurance company is required to invest capital stock to be deposited with insurance superintendent as condition of doing business are personal property within Ohio Rev. St., §§ 2744, 2730.

Syl. 9 (IX, 326). Charter fixing tax in lieu of others.

Approved in People's Sav. Bank v. Layman, 134 Fed. 638, in assessing property of savings banks under Code Iowa, § 1322, providing that assessment be made on stock shares, fact that part of bank's assets consist of government bonds does not entitle bank to deduction of such amount; New York v. State Board of Tax Commrs., 199 U. S. 42, 50 L. 77, 25 Sup. Ct. 715, arguendo. See 105 Am. St. Rep. 703, note.

95 U. S. 697-703, 24 L. 542, CHICAGO, R. I. & P. R. R. CO. v. HOUSTON.

Syl. 1 (IX, 328). Railroad crossing—Signals—Duty to listen.

Approved in Carlson v. Chicago etc. Ry. Co., 96 Minn. 508, 105 N. W. 557, Severy v. Chicago etc. Ry. Co., 6 Okl. 161, 50 Pac. 165, and Woolf v. Washington etc. Nav. Co., 37 Wash. 499, 79 Pac. 998, all following rule; Rich v. Chicago etc. Ry. Co., 149 Fed. 84, holding decedent crossing railroad yards on dark night contributorily negligent where he knew engines were constantly moving, though engine

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which, while backing, struck him, had no light on tender; Chicago etc. Ry. Co. v. Smith, 141 Fed. 931, applying rule where engine was running at prohibited speed; Tower Lumber Co. v. Brandvold, 141 Fed. 922, holding employee riding on logging car instead of on flat car provided for men guilty of negligence, though foreman permitted him to ride there; Gipson v. Southern Ry. Co., 140 Fed. 412, applying rule where one killed in daytime at crossing where train could be seen for quarter of mile, though train running at unlawful speed; Western Union Telegraph Co. v. Baker, 140 Fed. 319, where telegram informing plaintiff of father's death delayed, but she learned facts prior thereto and had time to catch train, but did not do so, company not liable for failure to attend funeral; Southern Ry. Co. v. Carroll, 138 Fed. 642, applying rule where traveler approached crossing at night in carriage with drawn side curtains; Dishon v. Cincinnati etc. Ry. Co., 133 Fed. 478, 66 C. C. A. 345, applying rule where section-hand crushed between two cars on siding while attempting to pass between them; St. Louis etc. Ry. Co. v. Johnson, 74 Ark. 376, 86 S. W. 284, whether one crossing sidetrack at dusk, and who was struck by backing unlighted train, looked and listened sufficiently and should have seen train, was for jury; West v. Northern Pac. Ry. Co., 13 N. D. 228, 229, 100 N. W. 255, 256, applying rule where plaintiff's servant knowing train was approaching at high speed trotted horses across track at place where view of train obstructed; Benson v. New York etc. R. R. Co., 26 R. I. 407, 59 Atl. 80, where space in top of end of car cut out to allow brakeman to use ladder, brakeman running along edge of top of car, instead of using running-board, and falling, owing to opening, is negligent.

Syl. 2 (IX, 330). Railroad crossing—Failure to look or listen.

Approved in Chicago etc. Ry. Co. v. Andrews, 130 Fed. 72, 74, 64 C. C. A. 399, following rule; Northern Pac. Ry. Co. v. Jones, 144 Fed. 50, applying rule where plaintiff injured while walking along railroad track; Storrs v. Grand Trunk etc. Ry. Co., 142 Mich. 381, 105 N. W. 766, where plaintiff, on approaching crossing, saw steam from engine and heard whistle, though he could not see train, whipped up horses to cross, he was negligent.

Syl. 3 (IX, 332). Negligence—Direction of verdict.

Approved in Oklahoma Gas etc. Co. v. Lukert, 16 Okl. 421, 84 Pac. 1084, applying rule where light wires broke and charged telephone wires, and decedent killed by contact with latter.

Syl. 4 (IX, 333). Instructions on assumed facts.

Approved in Louisville etc. R. R. Co. v. Satterwhite, 112 Tenn. 207, 79 S. W. 112, following rule; Sparks v. Oklahoma Territory, 146 Fed. 373, in prosecution for larceny where evidence showed defendant paid R. for cattle with draft on commission house payable to R.'s order, and latter sent draft to company with directions to place pro-

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ceeds in bank to his credit, admission of evidence that draft could not be paid without indorsement is reversible error.

95 U. S. 704-709, 24 L. 586, NEAL v. CLARK.

Syl. 3 (IX, 334). Bankruptcy discharge—Fiduciary debts.

Approved in Bullis v. O'Beirne, 195 U. S. 620, 49 L. 346, 25 Sup. Ct. 118, state judgment based on actual fraud of bankrupt is not discharged by bankruptcy, whatever may be form of action; Crawford v. Burke, 195 U. S. 189, 49 L. 152, 25 Sup. Ct. 9, under Bankr. Act 1898, § 17, subd. 4, only debts created by fraud of bankrupt while he was acting as officer or in fiduciary capacity are excepted from discharge in bankruptcy; Crosby v. Miller, 25 R. I. 176, 55 Atl. 329, discharge in bankruptcy releases judgment in trover.

95 U. S. 710-714, 24 L. 544, KELLY v. CALHOUN.

Syl. 2 (IX, 336). Acknowledgments—Personal acquaintance.

See 108 Am. St. Rep. 566, note.

Syl. 4 (IX, 336). Acknowledgment by corporation.

See 108 Am. St. Rep. 574, note.

95 U. S. 714-748, 24 L. 565, PENNOYER v. NEFF.

Syl. 2 (IX, 337). Defects in affidavit of publication—Appeal.

Cited in McFarlane v. Cornelius, 43 Or. 519, 73 Pac. 327, arguendo.

Syl. 6 (IX, 337). Regulation of conveyances—Land in other state.

Approved in Western Union Telegraph Co. v. Pittsburg etc. Ry. Co., 137 Fed. 437, in federal suit for specific performance of right of way contracts, it is immaterial that part of property is without territorial jurisdiction.

Syl. 8 (IX, 338). Jurisdiction—Nonresident having no property.

Approved in Coughran v. Germain, 17 S. D. 532, 97 N. W. 744, where defendants are jointly and severally liable on note on which judgment rendered against them in state other than that of domicile on service by publication, finding that defendants or one of them had property within jurisdiction sustains validity of judgment; dissenting opinion in Jordan v. Chicago & Northwestern etc., 125 Wis. 591, 110 Am. St. Rep. 865, 104 N. W. 806, 1 L. R. A. (N. S.) 885, majority holding under Rev. St. 1898, § 3819, determination of county court that decedent left property in state is not collaterally attackable. See 110 Am. St. Rep. 869, note.

Syl. 9 (IX, 339). Service by publication—Nonresidents.

Kerns v. McAulay, 8 Idaho, 565, 69 Pac. 540, following rule; Haddock v. Haddock, 201 U. S. 567, 568, 50 L. 869, 26 Sup. Ct. 525, mere domicile in state of one spouse does not give jurisdiction to render divorce decree enforceable in other states against nonresident defendant only constructively served; New Mexico v. Baker, 196 U. S. 444, 49

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L. 545, 25 Sup. Ct. 375, ownership of lands in New Mexico by railroad, none of whose offices are in territory, does not warrant service, in personal action, on president while passing through on train; Cella Com. Co. v. Bohlinger, 147 Fed. 422, holding void Kirby's Ark. Dig., § 835, authorizing personal judgment against foreign corporation on service on state auditor; Metropolitan Rubber Co. v. Place, 147 Fed. 95, decree in statutory suit for dissolution of corporation barring all claims not presented according to order of court, does not bar right of nonresident creditor not personally served to sue on claim; Kirk v. United States, 137 Fed. 755, 70 C. C. A. 187, affirming 130 Fed. 337, holding where surety on bail filed in federal court in Georgia resided in another state during pendency of proceedings on bond, two returns nihil are not equivalent to personal service; Murray v. Strong, 2 Alaska, 519, judgment in Canada court against resident of Alaska on process served on him in Alaska is void; First National Bank v. Eastman, 144 Cal. 490, 103 Am. St. Rep. 95, 77 Pac. 1045, judgment on personal service on nonresident out of state is void except as to disposition of property seized thereunder; Proctor v. Proctor, 215 Ill. 277, 106 Am. St. Rep. 168, 74 N. E. 146, 69 L. R. A. 673, where defendant in divorce is not served in state and has no property therein, court cannot render decree against him for alimony or land in another state; Baker v. Jewell, 114 La. 736, 38 So. 535, court of domicile of marriage may render divorce decree against nonresident husband on constructive service but render decree for costs or alimony; Hildreth v. Thibodeau, 186 Mass. 84, 104 Am. St. Rep. 560, 71 N. E. 111, where owners of patent were nonresidents and only service was by delivery of bill and order of notice in state of residence, and they appeared specially to contest jurisdiction, court could not proceed in personam; Silver Camp Mining Co. v. Dickert, 31 Mont. 496, 497, 78 Pac. 969, 970, service of summons by publication on nonresident defendant under Code Civ. Proc., §§ 637, 638, does not warrant judgment in personam against defendant appearing specially to challenge jurisdiction; Smith v. Colloty, 69 N. J. L. 371, 55 Atl. 807, construing Mechanics' Lien Law, § 24, with reference to judgment in personam against builder where legal service made; Watkinson v. Watkinson, 67 N. J. Eq. 156, 58 Atl. 390, defendant in divorce suit may have divorce decree set aside where neither party domiciled in state and defendant served out of state made no appearance; Hill v. Henry, 66 N. J. Eq. 154, 157, 57 Atl. 555, 556, construing P. L., p. 514, providing for publication against unascertained heirs and devisees and decree against them by class designation only; Goodwin v. Claytor, 137 N. C. 230, 107 Am. St. Rep. 479, 49 S. E. 175, 67 L. R. A. 209, where in garnishment proceedings under Code, § 364, service on nonresident had by publication and debt due defendant garnished lien on debt not lost by judgment against defendant and garnishee; Martin v. Martin, 214 Pa. 393, 63 Atl. 1027, where nonresident testator devised estate in trust and trustee removed to Pennsylvania and died there, decree in Delaware against representatives of trustee served only by publication, is void; Wallace v. United Electric Co., 211 Pa. 478, 479, 60 Atl. 1048, holding void P. L. 387, authorizing service of process on nonresident outside

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of jurisdiction in equity suit concerning property in state, as to service on bill of discovery against domestic and foreign corporations served on latter in state of domicile; Little v. Christie, 69 S. C. 59, 62, 48 S. E. 90, proceedings for publication of summons to nonresident before attachment of his property are void; Greenway v. De Young, 34 Tex. Civ. 585, 79 S. W. 605, in action on notes and to foreclose mortgage, where service on nonresidents had by publication only, personal judgment for deficiency is void; American etc. Colony Co. v. Schuler, 34 Tex. Civ. 566, 79 S. W. 374, court cannot forfeit charter of foreign corporation or secure dominion over its property outside of state; People's Nat. Bank v. Hall, 76 Vt. 283, 56 Atl. 1012, where only one partner was resident and firm had no property in state, service on resident member and attachment of his property and substituted service on nonresident without state gives no jurisdiction over latter or over firm; Disconto Gesellschaft v. Umbreit, 127 Wis. 670, 671, 106 N. W. 826, 827, default judgment on substituted service is not proof of indebtedness to plaintiff unless affidavit for publication described property of defendant within state; Maxcy v. McCord, 120 Wis. 572, 98 N. W. 530, upholding judgment in action on tax deed to bar former owners that plaintiff have his costs, though defendant served outside of state; dissenting opinion in Little v. Christie, 69 S. C. 64, 48 S. E. 91, majority holding proceedings for publication of summons to nonresident before attachment of his property are void; Schuler v. Ford, 10 Idaho, 747, 109 Am. St. Rep. 233, 80 Pac. 221, arguendo. See 109 Am. St. Rep. 256, note.

Distinguished in dissenting opinion in Haddock v. Haddock, 201 U. S. 609, 610, 50 L. 886, 26 Sup. Ct. 525, majority holding mere domicile in state of one spouse does not give jurisdiction to render divorce decree enforceable in other state against nonresident defendant only constructively served.

Syl. 10 (IX, 343). Service by publication and attachment—Nonresident.

Approved in Brand v. Brand, 116 Ky. 791, 76 S. W. 870, 63 L. R. A. 206, following rule; Haddock v. Haddock, 201 U. S. 569, 50 L. 869, 26 Sup. Ct. 525, mere domicile in state of one spouse does not give jurisdiction to render divorce decree enforceable in other state against nonresident defendant only constructively served; Wells v. Clark, 136 Fed. 465, where in state action against nonresident whose property attached is removed to federal court, latter court may render personal judgment; Mason v. Connors, 129 Fed. 833, under Vermont laws personal service on defendant in state gives jurisdiction to render personal judgment though he is nonresident; National Fire Ins. Co. v. Ming, 7 Ariz. 9, 60 Pac. 721, in action on insurance policy defense that plaintiff had been sued in California by his creditors and funds in hands of defendant garnished and were paid to creditors under garnishment proceedings, is good defense; West v. Lehmer, 115 La. 225, 38 So. 973, mere fact that in action against two defendants domiciled out of jurisdiction, jurisdiction is acquired as to one, does not authorize bringing other into court by citation of curator, though appearance of latter necessary for parties

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in court to obtain judgment; Silver Camp Mining Co. v. Dickert, 31 Mont. 498, 499, 501, 78 Pac. 970, 971, service of summons by publication on nonresident under Code Civ. Proc., §§ 637, 638, does not warrant judgment in personam against defendant appearing specially to challenge jurisdiction; May v. Getty, 140 N. C. 318, 53 S. E. 78, general judgment rendered under jurisdiction obtained by attachment not collaterally attackable as to property attached; Genest v. Las Vegas Masonic Bldg. Assn., 11 N. M. 265, 67 Pac. 746, in adjudication of lien under Comp. Laws 1897, §§ 2216-2232, service by publication against nonresident defendant is sufficient; Kidd v. New Hampshire Traction Co., 72 N. H. 283, 56 Atl. 468, 66 L. R. A. 574, where notice is given outside of state to foreign corporation as provided by statute, court has jurisdiction to control disposition of its property in state; Hotel Registry Corporation v. Stafford, 70 N. J. L. 534, 57 Atl. 148, portion of attachment act of 1901, authorizing attachment of property of absconders and nonresidents, not repealed by P. L. 1903, p. 560, § 84; Wells v. Scanlan, 124 Wis. 233, 102 N. W. 573, action to foreclose mortgage on land in state is not subject to ten year limitation on actions accruing out of state, though both plaintiff and defendant reside out of state. See 109 Am. St. Rep. 258, note.

Distinguished in Fisher v. Traders' Mut. Life Ins. Co., 136 N. C. 221, 222, 48 S. E. 669, upholding Pub. Laws 1901, p. 66, c. 5, requiring foreign corporation to appoint process agent and that if no agent appointed process may be served on corporation commission's secretary.

Syl. 12 (IX, 346). Credit to state judgment in federal court.

Approved in National Exchange Bank v. Wiley, 195 U. S. 270, 49 L. 190, 25 Sup. Ct. 70, judgment under warrant of attorney annexed to note authorizing confession of judgment in favor of holder is collaterally attackable in suit thereon in another state on ground that party in whose favor it was rendered was not holder; Lathrop etc. Co. v. Interior Const. etc. Co., 150 Fed. 670, where foreign corporation designated process agent in accordance with New York law and later ceased to do business in state and revoked appointment of agency, maintenance of action commenced prior to withdrawal does not authorize suit by service on Secretary of State under Laws N. Y. 1892, p. 1806, § 16; Phoenix Bridge Co. v. Castleberry, 131 Fed. 177, 65 C. C. A. 481, permitting collateral attack on grant of administration on estate of decedent by South Carolina court.

Syl. 13 (IX, 346). Judgments—Collateral attack on jurisdiction.

Approved in Cohen v. Portland Lodge of Elks, 144 Fed. 270, 274, upholding sufficiency of affidavit for publication of summons in foreclosure suit under Or. B. & C. Comp., § 56, where court had adjudged it sufficient; Cooper v. Brazelton, 135 Fed. 479, 68 C. C. A. 188, jurisdiction of state court to render judgment offered in evidence in federal court in same state is attackable; Cuykendall v. Doe, 129 Iowa, 457, 105 N. W. 700, enforcing judgment of sister state confessed under warrant of attorney though judgments so confessed not permitted by Iowa law.

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Syl. 14 (IX, 347). Due process of law implies what.

Approved in Martin v. White, 146 Fed. 467, Code Alaska, § 896, relating to appointment of guardian for lunatic requires personal service of notice on lunatic; Sylvester v. Willson, 2 Alaska, 335, order removing administrator who has become nonresident must show compliance with statute; Miller v. Hoffman, 135 Mich. 321, 97 N. W. 759, Comp. Laws 1897, § 10,698, declaring that if owner of impounded beasts be dissatisfied with claims of impounder he may have amount of liability determined by persons appointed by justice, requires opportunity to impounder to be heard; Groel v. United Elec. Co., 69 N. J. Eq. 416, 417, 60 Atl. 829, upholding P. L. 1896, p. 307, requiring foreign corporation to appoint process agent; Wilson v. American Palace Car Co., 65 N. J. Eq. 734, 55 Atl. 998, where bill seeks to affect claims of nonresident defendant to property out of state, court acquires jurisdiction only by service of process within state or voluntary appearance; Youst v. Willis, 5 Okl. 416, 49 Pac. 1014, upholding act of 1895, providing that on appeal from justice court judgment may be entered against surety on appeal bond after notice of motion therefor; Selden v. Kennedy, 104 Va. 830, 4 L. R. A. (N. S.) 944, 52 S. E. 637, holding one absenting himself for time prescribed by statute as raising presumption of death cannot be deprived of property by administration proceedings of which he had no notice.

Syl. 15 (IX, 347). Proceeding in rem defined.

Approved in Jones v. Byrne, 140 Fed. 469, federal court has no jurisdiction to foreclose lien on and order sale of land situated in another state; Patterson v. Farmington Str. Ry. Co., 76 Conn. 636, 57 Atl. 856, suit to adjust equitable interests in stock of domestic corporation and to compel registry on books of legal title in owner is proceeding in rem, so that decree binds nonresidents constructively served.

Syl. 16 (IX, 348). Proceedings to determine statutes—Notice.

Approved in Clark v. Clark, 191 Mass. 132, 77 N. E. 703, wife who has separated from husband because of his adultery may acquire domicile in another county for, and there sue for divorce; St. Louis v. Galt, 179 Mo. 17, 77 S. W. 879, 63 L. R. A. 778, conviction for violation of anti-weed ordinance in ordinary courts, with right of appeal, is due process.

Syl. 17 (IX, 348). Appeals—Notice required.

Approved in White v. White, 65 N. J. Eq. 747, 55 Atl. 741, upholding service out of state of notice of motion to increase allowance for support of children of divorced parents.

Syl. 18 (IX, 248). Requiring resident process agent.

Approved in Guenther v. American Steel Hoop Co., 116 Ky. 585, 586, 76 S. W. 420, upholding Civ. Code, § 51, subd. 6, authorizing substituted service on resident manager or agent of nonresident doing business in state.

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95 U. S. 754-759, 24 L. 580, MOBILE LIFE INS. CO. v. BRAME.

Syl. 1 (IX, 350). Action for wrongful death.

Approved in Kennedy v. Delaware Cotton Co., 4 Penne. (Del.) 481, 58 Atl. 826, father cannot recover for death of minor child. See 99 Am. St. Rep. 504, note.

(IX, 350.) Miscellaneous. Cited in Rowan v. Western Union Tel. Co., 149 Fed. 552, denying damages for mental anguish unaccompanied by physical injury, against telegraph company for failure to deliver death message to plaintiff, by reason of which he was prevented from attending funeral.

95 U. S. 760-764, 24 L. 588, UNITED STATES v. MOORE.

Syl. 3 (IX, 351). Executive construction of statutes.

Approved in United States v. Burkett, 150 Fed. 212, under 20 Stat. 113, c. 191, § 2, where timber culture entry not forfeited by Land Department for entryman's failure to make final proof within five years after expiration of eight years after entry, it was sufficient to sustain prosecution for conspiracy to obtain title by fraud; Avery v. Pima Co., 7 Ariz. 32, 60 Pac. 703, supervisors of county are persons with whom department of justice should contract for care of federal prisoners imprisoned in county jail; Halsey v. Belle Plaine, 128 Iowa, 471, 104 N. W. 496, construing Const., art. 11, § 3, prohibiting municipalities from becoming indebted to amount exceeding five per cent of value of its taxable property; Henry v. State, 87 Miss. 59, 39 So. 872, Rev. Code, 1892, § 3201, providing for working of convicts on leased farm, does not violate constitutional provision prohibiting leasing of convicts; Pitts v. Logan County, 3 Okl. 740, 41 Pac. 591, holding void act attempting to regulate accounting of fees of clerks of territorial district courts; Mann v. Mercer Co. Court, 58 W. Va. 660, 52 S. E. 779, construing Code 1899, c. 114, § 2, authorizing courts to adjourn from day to day; dissenting opinion in McDaid v. Territory, 1 Okl. 112, 30 Pac. 444, majority holding under 26 Stat. 109, after issue of patent to townsite trustees no appeal lies to Land Department from decision of trustees awarding land to contestant.

95 U. S. 764-768, 24 L. 589, YEATMAN v. SAVINGS INSTITUTION.

Syl. 1 (IX, 353). Bankruptcy assignee takes subject to liens.

Approved in York Mfg. Co. v. Cassell, 201 U. S. 352, 50 L. 785, 26 Sup. Ct. 481, adjudication in bankruptcy does not operate as lien in favor of trustee as against conditional vendor of property sold to bankrupt because of noncompliance with state statute as to filing; Thompson v. Fairbanks, 196 U. S. 526, 49 L. 586, 25 Sup. Ct. 306, enforcement of inchoate lien of chattel mortgage covering after-acquired property by taking possession with mortgagor's consent after condition broken as authorized by mortgage is not preference; Hewit v. Berlin Machine Works, 194 U. S. 303, 48 L. 988, 24 Sup. Ct. 690, bankruptcy trustee is not subsequent bona fide purchaser within N. Y. Laws, 1897, c. 418, § 112, avoiding conditional sales unaccompanied by change of pos-

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session; Lindeke v. Associates Realty Co., 146 Fed. 639, where notice to quit was served on tenant, his subsequent adjudication as bankrupt did not require reservice on trustee; In re Cramond, 145 Fed. 976, persons performing labor for city contractor who afterward became bankrupt, having filed no notice of lien as required by N. Y. Laws 1897, p. 517, have no lien on amount due from city though they are entitled to priority over general creditors; Bush v. Export Storage Co., 136 Fed. 923, title passing to bankrupt's trustee under Bankr. Act, 1898, § 70a, subd. 4, to property transferred in fraud of creditors, excludes property which passed to bona fide purchaser prior to adjudication. See 104 Am. St. Rep. 913, note.

95 U. S. 769-774, 24 L. 545, UNITED STATES v. CLARK COUNTY.

Syl. 2 (IX, 354). Mandamus to compel tax levy.

Approved in Milster v. Spartanburg, 68 S. C. 33, 46 S. E. 541, city cannot be compelled by mandamus to levy taxes prior to constitution of 1895, in absence of statute authorizing tax for past years.

95 U. S. 774-781, 24 L. 583, ALEXANDRIA v. FAIRFAX.

Syl. 2 (IX, 355). Service of process on municipal officer.

Approved in King v. Davis, 137 Fed. 206, under Code Va. 1887, § 3207, relating to substituted service, return showing service by leaving copy with defendant's wife, but not showing she was member of his family, is insufficient.

Syl. 3 (IX, 355). Confiscation—Notice as prescribed by statute.

Approved in King v. Davis, 137 Fed. 208, under Code Va. 1887, § 3207, authorizing substituted service by posting on "front door," return showing posting on "door" is insufficient.

XCVI UNITED STATES.

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96 U. S. 24, 24 L. 708, PENSACOLA ETC. TEL. CO. v. WESTERN ETC. TEL. CO.

Syl. 2 (IX, 356). Commerce—Telegraph—State regulation.

Approved in Ames v. Kirby, 71 N. J. L. 445, 59 Atl. 559, statute prohibiting poolroom is violated by keeping room where wagers are made by telegraph with persons out of state; Postal Tel. Cable Co. v. Umstadter, 103 Va. 743, 50 S. E. 260, Code 1887, § 1291, imposing penalty on telegraph company for failure to transmit message does not violate commerce clause of federal constitution; dissenting opinion in Northern Securities Co. v. United States, 193 U. S. 393, 48 L. 723, 24 Sup. Ct. 436, majority holding combination by stockholders of two competing interstate railroads to form stockholding company to acquire, in exchange for its capital stock, control of each road, violates anti-trust act of

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1890; Metropolitan Life Ins. Co. v. Board of Assessors, 115 La. 706, 39 So. 849, arguendo.

Syl. 4 (IX, 359). Telegraph aid act—State control.

Approved in Western Union Tel. Co. v. Pennsylvania R. R. Co., 195 U. S. 560, 564, 565, 49 L. 319, 320, 321, 323, 25 Sup. Ct. 133, telegraph company cannot occupy railroad right of way without consent of railroad.

Distinguished in dissenting opinion in Western Union Tel. Co. v. Pennsylvania R. R. Co., 195 U. S. 585, 591, 594, 49 L. 329, 331, 332, 25 Sup. Ct. 133, majority holding telegraph company cannot supply railroad right of way without railroad's consent.

Syl. 6 (IX, 360). Telegraph Act—Taking private property.

Approved in Western Union Tel. Co. v. Pennsylvania R. R. Co., 195 U. S. 567, 569, 572, 573, 49 L. 321, 322, 324, 25 Sup. Ct. 133, telegraph company cannot occupy railroad right of way without railroad's consent.

(IX, 356.) Miscellaneous. Cited in City of Nichita v. Old Colony Trust Co., 132 Fed. 649, 66 C. C. A. 19, as showing that telegraph companies accepted provisions of act of July 24, 1866.

96 U. S. 24-30, 24 L. 644, JONES v. UNITED STATES.

Syl. 2 (IX, 361). Sales—Recovery—Noncompliance.

Approved in Webb Granite etc. Co. v. Worcester, 187 Mass. 391, 73 N. E. 641, failure of city contractor to finish contract within time limit is not default where he is enjoined from proceeding with work; Powers v. Rude, 14 Okl. 395, 79 Pac. 94, determine validity of subscription contract; Reid v. Alaska Packing Co., 43 Or. 435, 73 Pac. 339, where agent of seller exceeded authority in warranting goods, declarations of seller's officers, on receiving memorandum that they would not ratify it because they did not have goods specified are admissible in action by buyer for breach.

96 U. S. 37-50, 24 L. 696, UNITED STATES v. CLARK.

Syl. 1 (IX, 364). Conclusiveness of findings of court of claims.

Approved in Conners v. United States, 141 Fed. 17, 19, applying rule in action against government on building contract.

96 U. S. 51-63, 24 L. 681, CROMWELL v. COUNTY OF SAC.

Syl. 1 (IX, 365). Municipal bonds—Bona fide holder.

Approved in Gamble v. Rural etc. School Dist., 146 Fed. 116, where, at time of enactment of Iowa Code, 1897, § 3070, limiting recovery on negotiable paper procured by fraud, innocent purchaser held negotiable school bond fraudulently issued, and sold it after maturity for less than face value, transferee could recover full amount of bond though he knew of fraud.

Syl. 5 (IX, 367). Vendee of bona fide purchaser of municipal bonds.

Approved in Board of Commrs. v. Tollman, 145 Fed. 763, where railroad acquired aid bonds before state decision construing constitutional

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provision alleged to be violated by bond statute, railroad's assignees of bonds purchasing after state decision entitled to have federal construction of constitution.

Syl. 6 (IX, 368). Amount recoverable by bona fide purchaser.

Approved in Mersick v. Alderman, 77 Conn. 638, 60 Atl. 111, one suing on note held as collateral may set up facts disclosing right to prima facie recover amount of note, leaving defendant to allege facts limiting right of recovery to amount of debt secured.

Distinguished in Gamble v. Rural Ind. School Dist., 132 Fed. 523, purchaser of overdue fraudulently issued municipal bond of face value of $2,200 for $50 can recover only amount paid where he knew of fraud, though seller was bona fide purchaser.

Syl. 11 (IX, 370). Law governing interest—Usury.

Approved in Davis v. Tandy, 107 Mo. App. 448, 81 S. W. 460, determining law governing usury where note given in one state is payable in another.

96 U. S. 63-69, 24 L. 651, ST. CLAIR COUNTY TURNPIKE CO. v. ILLINOIS.

Syl. 2 (IX, 371). Franchises strictly construed.

Approved in Knoxville Water Co. v. Knoxville, 200 U. S. 33, 50 L. 359, 26 Sup. Ct. 224, municipal grant of waterworks franchise does not devest municipality of power to construct its own waterworks.

96 U. S. 69-75, 24 L. 610, TENNESSEE v. SNEED.

Syl. 1 (IX, 371). Contract obligations—Change in remedy.

Approved in Miners' etc. Bank v. Snyder, 100 Md. 65, 108 Am. St. Rep. 390, 59 Atl. 708, 68 L. R. A. 312, contractual rights of creditors of trust company under act imposing double liability on stockholders not impaired as to one who sued stockholder but had not obtained judgment by statute substituting equity suit for benefit of all creditors against all stockholders.

96 U. S. 76-83, 24 L. 826, MEISTER v. MOORE.

Syl. 3 (IX, 373). Statutes prescribing marriage form directory.

Approved in Reaves v. Reaves, 15 Okl. 254, 82 Pac. 495, upholding validity of common-law marriage.

96 U. S. 84-86, 24 L. 653, SOUTHERN LIFE INS. CO. v. McCAIN.

Syl. 2 (IX, 374). Authority of agent—Secret limitations.

Approved in Mutual Life Ins. Co. v. Abbey, 76 Ark. 332, 88 S. W. 951, though soliciting agent of insurer requiring payment of premiums in cash cannot accept notes in lieu thereof, insurer is bound where general agent authorizes solicitor to accept notes.

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96 U. S. 87-90, 24 L. 615, McALLISTER v. KUHN.

Syl. 3 (IX, 376). Complaint for conversion.

Distinguished in Crosby v. Stratton, 17 Colo. App. 217, 218, 68 Pac. 132, complaint in action by one stockholder against another, alleging that each stockholder was entitled to purchase certain proportion of stock and that defendant caused to be issued to himself shares in excess of his proportion is insufficient.

96 U. S. 97-108, 24 L. 616, DAVIDSON v. NEW ORLEANS.

Syl. 5 (IX, 378). Fifth amendment applies to government only.

Approved in St. Louis etc. Ry. Co. v. Davis, 132 Fed. 632, allegation in suit to enjoin state officers that their acts will violate fifth amendment does not give federal court jurisdiction.

Syl. 1 (IX, 378). Due process of law.

Approved in Union Refrigerator Transit Co. v. Kentucky, 199 U. S. 203, 50 L. 153, 26 Sup. Ct. 36, holding void tax assessed on rolling stock of domestic corporation used and permanently located in other states; Fayerweather v. Ritch, 195 U. S. 297, 49 L. 209, 25 Sup. Ct. 58, upholding direct appeal from circuit court judgment giving effect as res adjudicata to state judgment which deprived parties of property without finding of vital facts; King v. Hatfield, 130 Fed. 582, construing provisions of West Virginia constitution relative to forfeiture of lands for noncharging of taxes thereon.

Syl. 7 (IX, 378). Due process of law—Assessments.

Approved in Ex parte Moebus, 137 Fed. 156, petition for habeas corpus, showing that petitioner since extradition has been imprisoned for five years on governor's warrant only presents federal question; McMillan v. Butte, 30 Mont. 227, 76 Pac. 205, upholding Sess. Laws 1897, p. 219, § 30, providing for payment of street improvements according to area; Hodge v. Muscatine Co., 121 Iowa, 490, 104 Am. St. Rep. 304, 96 N. W. 971, 67 L. R. A. 624, upholding Code, § 5007, taxing vendor of cigarettes and buildings used in their manufacture or sale; Hoerts v. Jefferson etc. Draining Co., 119 Ky. 883, 84 S. W. 1143, upholding Acts 1857-58, p. 124, c. 518, incorporating drainage company for reclamation of swamp lands to be paid for by special assessment on property benefited on notice by posting and publication; Taylor v. Crawford, 72 Ohio St. 570, 74 N. E. 1068, 69 L. R. A. 805, upholding 95 Ohio Laws, p. 155, § 3, providing for cleaning and repairing drains and watercourses; Gray v. Stiles, 6 Okl. 546, 49 Pac. 1104, construing Stat. 1893, par. 5624, § 1, relating to equalization of assessments; Youst v. Willis, 5 Okl. 416, 49 Pac. 1014, upholding act of 1895, relating to justice court appeals and providing for entry of judgment on motion in appellate court against sureties on appeal; State v. Seattle, 42 Wash. 375, 85 Pac. 13, assessment for street improvements is void as to such property as is not given notice required by law between filing of assessment-roll and its confirmation.

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Syl. 10 (IX, 381). "Due process of law" undefined.

Approved in St. Louis etc. Ry. Co. v. Davis, 132 Fed. 633, upholding assessment of railroad property by Arkansas railroad assessors pursuant to statutes which provide time and place of assessment and for public hearing; State v. Cantwell, 179 Mo. 270, 78 S. W. 576, upholding Laws 1901, p. 211, fixing eight hours as day's work in mines; Ex parte Boyce, 27 Nev. 339, 75 Pac. 6, 65 L. R. A. 47, upholding act of 1903, providing eight-hour day for work in mines and smelters.

Syl. 11 (IX, 383). Due process—Judicial inquiry on notice.

Approved in Leigh v. Green, 193 U. S. 88, 89, 48 L. 627, 24 Sup. Ct. 390, due process not denied holder of lien on realty by lack of provision for personal service of pendency of proceedings to enforce lien of tax sale purchaser where notice given by publication; Jones v. Nashville etc. Ry. Co., 141 Ala. 394, 37 So. 679, where foreign railroad charter provided that in absence of contract, presumed that right of way granted by owner unless owner should apply for assessment of value within five years of completion of road did not apply to local land owner whose land appropriated without condemnation proceedings; Kite v. People, 32 Colo. 9, 74 Pac. 888, in proceeding under Mills Ann. St., § 1343, providing for destruction of gambling devices whenever judge decides they are used for gambling purposes, jury not required; Buck v. Beach, 164 Ind. 50, 108 Am. St. Rep. 272, 71 N. E. 968, determining power of state to tax personalty situated therein where another state has taxed it; Voris v. Pittsburg Plate Glass Co., 163 Ind. 607, 70 N. E. 252, holding Burns' Rev. St. 1894, §§ 4290, 4293, 4294, relating to assessments on abutting property, is valid as to owner of back-lying land; Ross v. Board of Supervisors, 128 Iowa, 441, 104 N. W. 511, Code, tit. 10, c. 2, relative to construction of drainage ditches, is not void as failing to provide notice of proceedings for appointment of commissioners to classify lands and fix boundaries of district; Succession of Levy, 115 La. 382, 39 So. 38, upholding tax on all successions not finally closed and on all successions opened in future; Yazoo etc. R. R. Co. v. Harrington, 85 Miss. 375, 37 So. 1017, upholding Rev. Code, 1892, § 3561, requiring railroads to maintain cattle-guards where tracks pass inclosed lands; Kettle v. Dallas, 35 Tex. Civ. 638, 80 S. W. 878, upholding act amending Dallas charter and providing for creation of improvement districts by council and providing for assessment of realty therein for improvements; Whitlock v. Hawkins, 105 Va. 266, 63 S. E. 409, upholding act of March 17, 1906, amending Code, § 444, providing that persons aggrieved by assessment may apply to courts for relief prior to February 1st of year succeeding assessment; dissenting opinion in Lochner v. New York, 198 U. S. 66, 49 L. 945, 25 Sup. Ct. 539, majority holding void New York act of 1897, limiting hours of employment in bakeries. See 101 Am. St. Rep. 606, note.

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Syl. 13 (IX, 385). Due process—Fair trial in court.

Approved in McKinster v. Sager, 163 Ind. 677, 106 Am. St. Rep. 268, 72 N. E. 856, 68 L. R. A. 273, holding void statute invalidating sales in bulk while merchant indebted.

Syl. 14 (IX, 385). Due process—Levy of drainage assessment.

Approved in Louisville etc. R. R. Co. v. Barber Asphalt Pav. Co., 197 U. S. 434, 49 L. 822, 25 Sup. Ct. 466, fact that only use made of lot abutting on street improvement is for railway right of way does not invalidate assessment for grading and paving under area rule.

96 U. S. 108-112, 24 L. 764, ARTHUR v. MORRISON.

Syl. 1 (IX, 388). Tariff—Commercial designation.

Approved in Darlington v. United States, 136 Fed. 718, dress shields are dutiable as wearing apparel.

Syl. 2 (IX, 389). Statutes—Legislative change in construction.

Approved in dissenting opinion in Irwin v. Irwin, 2 Okl. 219, 37 Pac. 560, majority holding by Act of Congress ratifying Okl. St., art. 31, c. 70, § 7, probate courts vested with jurisdiction in divorce cases.

96 U. S. 112-118, 24 L. 766, ARTHUR v. LAHEY.

Syl. 2 (IX, 389). Tariff—Specific designation.

Approved in United States v. Schwarz, 140 Fed. 304, celluloid toys are dutiable under par. 418, sched. N, Act of 1897, and not under par. 17, sched. A; Carter, Webster & Co. v. United States, 137 Fed. 980, embroidered hose are subject to par. 339, sched. J, where rate therein exceeds rate provided for by par. 318; United States v. Boden, 133 Fed. 840, canned pineapples containing only sufficient sugar to flavor them are dutiable under lower rate provided for by par. 263, sched. G, Act of 1897.

96 U. S. 125-128, 24 L. 771, ARTHUR v. STEPHANI.

Syl. 1 (IX, 391). Customs duties.

Approved in United States v. Boden, 133 Fed. 840, pineapples containing only sufficient sugar to flavor are dutiable under lower rate provided for by par. 263, sched. G, Act of 1897; Brennan v. United States, 129 Fed. 838, pickled limes are dutiable under par. 266, sched. G, Act of 1897.

96 U. S. 131-135, 24 L. 773, MURPHY v. ARNSON.

Syl. 1 (IX, 392). Customs duties—Similitude.

Approved in dissenting opinion in Benedict v. Davidson County, 110 Tenn. 193, 67 S. W. 809, majority holding logs grown in state prior to being sawed are within Const., art. 2, § 30, exempting from taxation articles manufactured from produce of state.

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96 U. S. 137-141, 24 L. 811, ARTHUR v. HOMER.

Syl. 1 (IX, 393). Customs duties—Embroidered linen.

Approved in Carter Webster & Co. v. United States, 137 Fed. 980, embroidered hose are subject to par. 339, sched. J, when rate therein exceeds rate provided for by par. 318.

96 U. S. 145-147, 24 L. 814, ARTHUR v. RHEIMS.

Syl. 1 (IX, 394). Tariff—Invoice value—Cash discount.

Approved in United States v. Lahey, 132 Fed. 183, collector cannot, after appraiser has appraised and marked item of commission as non-dutiable, include item in invoice value.

96 U. S. 148-153, 24 L. 758, DAVIES v. ARTHUR.

Syl. 1 (IX, 394). Tariff—Importer's protest.

Approved in Kahn v. Herold, 147 Fed. 580, where, at time executors paid internal revenue inheritance tax on life estate under protest, they did not know life tenant had died, payment was not voluntary; Rosenberg v. United States, 146 Fed. 84, protest stating merely that merchandise was dutiable at appropriate rate and under proper paragraph according to component material of chief value is insufficient.

96 U. S. 153-161, 24 L. 844, KOHLSAAT v. MURPHY.

Syl. 3 (IX, 395). Statutory intent—Pari materia.

Approved in In re McKenzie, 132 Fed. 988, widow of bankrupt who died after adjudication and after trustee took possession is not entitled to dower in personalty; Brown v. Woods, 2 Okl. 604, 39 Pac. 474, attorney suspended from practice in district court of county in which he is elected county attorney cannot perform duties of office pending suspension.

96 U. S. 165-168, 24 L. 621, NATOMA WATER & MINING CO. v. BUGBY.

Syl. 1 (IX, 396). School lands—Settler's failure to claim.

Approved in Gonzales v. French, 4 Ariz. 82, 33 Pac. 504, where settler on school section failed to assert claim to pre-emption after survey, but sold possessions and improvements, purchaser acquired no interest in lands.

96 U. S. 168-174, 24 L. 622, BRAWLEY v. UNITED STATES.

Syl. 1 (IX, 396). Sales—Warranty—Estimated quantity.

Approved in Inman Bros. v. Dudley etc. Lumber Co., 146 Fed. 451, where defendant contracted to sell all lumber on hand estimated at certain quantity, and also entire cut for certain year estimated at certain quantity, contract was not for sale of definite quantity.

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Syl. 2 (IX, 397). Sales—What variation in quantity permitted.

Approved in Moore v. United States, 196 U. S. 168, 49 L. 434, 25 Sup. Ct. 202, delivery of 4,634 tons of coal under contract for delivery of about 5,000 tons does not complete contract so as to warrant refusal of tender of remainder; Hadley Dean Plate Glass Co. v. Highland Glass Co., 143 Fed. 243, applying rule to contract to supply certain quantity of glass.

Syl. 3 (IX, 397). Sales—Quantity—More or less as necessary.

Distinguished in Ready v. J. L. Fulton Co., 179 N. Y. 404, 405, 72 N. E. 319, where contract provided that vendor should furnish not less than 5,000 yards nor more than 8,000 yards of stone, and if more than 5,000 required, three weeks' notice given of extra amount, and vendor sued for breach prior to delivery of 5,000 yards, he could recover damages only for difference between amount furnished and 5,000 yards.

Syl. 5 (IX, 397). Writing merges prior negotiations—Parol.

Approved in Simpson v. United States, 199 U. S. 398, 50 L. 245, 26 Sup. Ct. 54, written contract of government to take fresh beef needed for army in interior of Cuba not extended to cover entire island whenever refrigerated beef insufficient, because of prior conversation between contractor and commissary general, in which latter said such was intent of department; Connecticut Fire Ins. Co. v. Buchanan, 141 Fed. 889, where policy covered building while occupied as school, parol evidence that it was intended to cover building while vacant is inadmissible.

96 U. S. 193-198, 24 L. 654, DEWING v. PERDICARIES.

Syl. 4 (IX, 401). Stockholder's suit to vacate sale—Parties.

Approved in Von Arnim v. American Tube Works, 188 Mass. 519, 74 N. E. 681, right of corporation to recover from one of its officers property converted by him, or its value, survives against his estate.

(IX, 400.) Miscellaneous. Cited in Day v. Smith, 87 Miss. 407, 39 So. 528, taking judicial notice of statutes of Mississippi in 1861.

96 U. S. 199-204, 24 L. 656, GOLD WASHING ETC. CO. v. KEYES.

Syl. 1 (IX, 401). Petition must show removable cause.

Approved in Thompson v. Stalmann, 131 Fed. 811, where removal petition avers that controversy was between citizens of different states and that amount involved exceeded $2,000, federal court could permit amendment to show citizenship of parties.

Syl. 2 (IX, 402). Removal petition should state facts.

Approved in Illinois etc. Ry. Co. v. Jones, 118 Ky. 165, 80 S. W. 485, following rule; Joy v. St. Louis, 201 U. S. 340, 50 L. 780, 26 Sup. Ct. 478, petition in ejectment showing dispute over construction of patent does not show federal question where it appears that real

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controversy is over claim of plaintiff to accretion; Offner v. Chicago etc. R. Co., 148 Fed. 203, petition for removal, in action against local and nonresident corporation, filed by nonresident alone, alleging co-defendant fraudulently joined to prevent removal, is insufficient; Southern Cash Register Co. v. National Cash Register Co., 143 Fed. 661, where each count in complaint alleged damages in sum of $1,900, and also prayed for injunction, allegation in removal petition that amount in controversy exceed, $2,000 deemed true.

Syl. 3 (IX, 403). Removability of cause—Federal question.

Approved in Myrtle v. Nevada etc. Ry. Co., 137 Fed. 196, state action to recover for personal injuries caused by failure of railroad to use safety appliances not removable, though complaint alleged defendant engaged in interstate commerce; Terry v. Bird, 129 Fed. 594, 64 C. C. A. 160, circuit court suit by Indian to determine rights under patent conveying land in severalty under Indian treaty is not reviewable by circuit court of appeals, but is appealable directly to supreme court.

96 U. S. 211-218, 24 L. 628, UNITED STATES v. COUNTY OF CLARK.

Syl. 1 (IX, 406). Railroad aid bonds county debt.

Approved in Eaton v. Mimnaugh, 43 Or. 476, 73 Pac. 757, holding void Gen. Laws 1903, p. 104, providing for relocation of county seat and providing in case new county seat selected, construction of new courthouse to be paid for by county warrants payable out of tax to be levied for five years.

(IX, 406). Miscellaneous. Cited in Rose v. McKie, 145 Fed. 590, it is no defense to mandamus to compel town officers to perform duties imposed on them by statute toward providing for payment of judgment against town that duties do not include all acts requisite to full satisfaction; Newman v. Kay, 57 W. Va. 112, 49 S. E. 931, as to what is dicta.

96 U. S. 218-231, 24 L. 613, WERNER v. KING.

Syl. 2 (IX, 407). Patent infringement.

Approved in Scott v. Fisher Knitting Machine Co., 139 Fed. 145, Bellis patent No. 561,559, for improvement in knitting machines, not infringed by machine of Fisher patent No. 656,535.

96 U. S. 234-245, 24 L. 689, KNICKERBOCKER LIFE INS. CO. v. NORTON.

Syl. 1 (IX, 407). Insurer may waive conditions.

Approved in Talbott v. Metropolitan L. Ins. Co., 142 Fed. 696, where general agent had authority to accept premiums within thirty days after due acceptance of premium and delivery of receipt within such time renewed policy from that date; Pennsylvania Casualty Co. v.

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Bacon, 133 Fed. 909, 67 C. C. A. 497, where accident policy provided that waivers must be indorsed and signed by officer of company, and latter did not charge premiums to agent till actually received, agent could not accept note in lieu of first premium, and thus waive conditions; Farmers' etc. Ins. Co. v. Caine, 224 Ill. 608, 79 N. E. 959, where benefit certificate required payment of assessments when due as condition to continuance of insurance, and provided that waivers must be written and approved by officers, verbal agreement by society to extend time of payment waives right to have same in writing; Massillon Engine etc. Co. v. Shirmer, 122 Iowa, 702, 98 N. W. 505, applying rule to waiver of provision in contract of sale containing warranty that six days' use shall be conclusive evidence of fulfillment of warranty; Frost v. North British etc. Ins. Co., 77 Vt. 415, 60 Atl. 805, holding requirement as to furnishing proof of loss within sixty days waived.

Syl. 2 (IX, 409). Insurance—Parol waiver of conditions—Agent.

Approved in Collins v. Metropolitan Life Ins. Co., 32 Mont. 343, 108 Am. St. Rep. 578, 80 Pac. 612, fact that one payment made after due was reported to insurer as made when due did not show insurer knew of agreement that insured pay after due; Aetna Life Ins. Co. v. Fallow, 110 Tenn. 736, 77 S. W. 941, where policy provided that there should be no insurance unless premium paid at time of accident, but general agent told insured to wait for collector, and premium due prior to accident was so collected afterward, insurer liable. See 107 Am. St. Rep. 106, 145, note.

Syl. 3 (IX, 490). Insurance—Prohibition against waivers by agents.

Approved in Aetna Life Ins. Co. v. Fallow, 110 Tenn. 730, 739, 77 S. W. 939, 942, where policy provided that there should be no insurance unless premium paid at time of accident, but general agent told insured to wait for collector, and premium due prior to accident was so collected afterward, insurer liable.

Distinguished in Deming Inv. Co. v. Shawnee Ins. Co., 16 Okl. 11, 83 Pac. 921, where agent knowing facts as to title wrote application which misstated facts, insurer not liable.

Syl. 4 (IX, 410). Insurance—Waiver—Nonpayment of premiums.

Approved in Dargan v. Equitable Life etc. Soc., 71 S. C. 359, 51 S. E. 126, holding condition in application that insurance should not take effect till first premium paid during good health waived.

Distinguished in Medley v. German etc. Ins. Co., 55 W. Va. 351, 47 S. E. 105, clause in policy limiting authority of agent is not notice to insured of agent's want of power to bind principal with respect to transactions prior to delivery of policy.

Syl. 5 (IX, 412). Insurance—Forfeiture not favored.

Approved in Lynchburg etc. Mill Co. v. Travelers' Ins. Co., 149 Fed. 958, where employer's liability policy provided for bar of action

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thereon after thirty days from accrual of right, but insurer participated in compromise negotiations for over ninety days after time limit, limitation was absolutely waived; Battin v. Northwestern Mut. L. Ins. Co., 130 Fed. 876, 65 C. C. A. 358, declaration alleging payment and acceptance of lesser sum on account and credit for balance of premium sufficiently alleges waiver of condition that if premium not paid when due policy shall cease; Washburn v. Union etc. Ins. Co. 143 Ala. 489, 38 So. 1012, where insurer accepted note for annual premium, and after its maturity retained it and insisted on its payment, it waived forfeiture for nonpayment of premium; Denver Life Ins. Co. v. Crane, 19 Colo. App. 201, 73 Pac. 879, where benefit policy provided for reinstatement after forfeiture and furnishing assurance of good health, and medical examiner called to examine him, but did not find him, and later notice of maturity of premium sent him, medical examination waived; Farmers' etc. Ins. Co. v. Jackman, 35 Ind. App. 17, 73 N. E. 735, holding condition in policy as to change in condition of title waived; National Masonic etc. Assn. v. McBride, 162 Ind. 381, 70 N. E. 484, holding condition in accident policy requiring proof of injury in ninety days waived; Graham v. Security Mut. Life Ins. Co., 72 N. J. L. 304, 309, 62 Atl. 683, 685, holding condition for forfeiture for failure to premium waived; Gish v. Insurance Co. of North America, 16 Okl. 74, 87 Pac. 873, determining waiver of iron-safe clause.

96 U. S. 245-258, 24 L. 828, McLEAN v. FLEMING.

Syl. 1 (IX, 413). Equity—Trademark infringement.

Approved in Buzby v. Davis, 150 Fed. 278, enjoining use of word "Keystone" from use in unfair competition; Baker v. Puritan Pure Food Co., 139 Fed. 681, protecting trademark consisting of picture of woman dressed as waitress copied from painting; Nesne v. Sundet, 93 Minn. 300, 101 N. W. 491, enjoining corporation from using trade name adopted prior thereto by partnership engaged in like business in same place.

Syl. 2 (IX, 414). Trademark infringement—Exact similitude.

Approved in Howe Scale Co. v. Wyckoff, 198 U. S. 140, 49 L. 986, 25 Sup. Ct. 609, manufacturer of "Remington" typewriter not entitled to protection against use of name "Remington-Sholes" by persons named "Remington" and "Sholes"; Kronthal Waters v. Becker, 137 Fed. 654, where mineral water from certain springs put up in certain size and shape bottles with blue label, use of similar bottles and labels with different words for different water enjoined; Devlin v. McLeod, 135 Fed. 166, enjoining use of words "Toothache Gum" on packages similar to complainant's; People v. Rose, 219 Ill. 58, 76 N. E. 45, refusing mandamus to compel Secretary of State to issue certificate of incorporation under name, use of which may be enjoined by existing company; Cusimano v. Olive Oil Imp. Co., 114 La. 315, 38 So. 201, protecting trademark for "Chicken Cock" olive oil; W. R. Lynn

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Shoe Co. v. Auburn-Lynn Shoe Co., 100 Me. 474, 62 Atl. 504, holding trademark "Auburn-Lynn Shoe Co." infringed by trademark of company organized by Lynn in Auburn; Regis v. Janes, 185 Mass. 460, 70 N. E. 481, word "Rexell" infringes registered trademark "Rex"; Woodcock v. Guy, 33 Wash. 239, 240, 74 Pac. 359, where in suit to restrain infringement of nonregistered trademark, complaint asking that plaintiff be protected in use of trade word, without charging that defendant had simulated labels so as to deceive, or that use of word was fraudulent, is insufficient.

Syl. 3 (IX, 416). Trademark infringement—Laches.

Approved in Hygeia etc. Water Co. v. Consolidated Ice Co., 144 Fed. 142, length of time of innocent use of another's trademark unknown to owner does not defeat injunction against infringer.

Syl. 6 (IX, 418). Trademark infringement—Intent.

Approved in W. R. Lynn Shoe Co. v. Auburn-Lynn Shoe Co., 100 Me. 475, 476, 62 Atl. 505, holding trademark "Auburn-Lynn Shoe Co." infringed by trademark of company organized by Lynn in Auburn.

Syl. 7 (IX, 418). Trademark infringement—Proof—Intent.

Approved in Bickmore Gall Cure Co. v. Karns, 134 Fed. 835, 67 C. C. A. 439, holding labels used on horse-gall cure so similar as to show design to deceive.

Syl. 9 (IX, 420). Trademark infringement—Part profits.

Approved in W. R. Lynn Shoe Co. v. Auburn-Lynn Shoe Co., 100 Me. 479, 62 Atl. 507, granting account of all profits growing out of sale of goods on which infringed trademark used to date of decree; Gaines v. Whyte Grocery Co., 107 Mo. App. 515, 516, 81 S. W. 650, 651, in suit to enjoin infringement of trademark, statute of limitations does not apply; International Silver Co. v. Rogers Corporation, 66 N. J. Eq. 141, 57 Atl. 725, holding right to accounting in suit for infringement of trademark barred by laches.

Distinguished in Regis v. Jaynes, 191 Mass. 247, 249, 77 N. E. 775, 776, in suit to restrain infringement of trademark, defendant, who persisted in infringement during litigation, cannot defend accounting on ground of accidental use.

96 U. S. 258-268, 24 L. 693, OHIO & M. R. R. CO. v. McCARTHY.

Syl. 3 (IX, 421). Carriers of cattle—Connecting carrier's delay.

See 106 Am. St. Rep. 609, note.

Syl. 4 (IX, 421). Contract for shipment over other lines.

Approved in Northern Pac. Ry. Co. v. American Trading Co., 195 U. S. 459, 49 L. 278, 25 Sup. Ct. 84, agent of receiver may make special agreement to forward through shipment by steamer of connecting carrier sailing on designated day.

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Syl. 5 (IX, 422). Corporation's contract presumed valid.

Approved in In re Castle Braid Co., 145 Fed. 234, upholding contract between corporation and its directors for purchase by former of stock held by latter.

Syl. 6 (IX, 422). Corporations—Ultra vires not favored.

Approved in United States S. & L. Co. v. Convent of St. Rose, 133 Fed. 358, where contract between loan association and borrowing stockholder which is corporation is fully executed by former, latter, after using money, cannot defeat enforcement of contract on ground that it could not be stockholder; Hinds County v. Natchez etc. R. R. Co., 85 Miss. 629, 107 Am. St. Rep. 310, 38 So. 191, neither corporation nor its stockholders can complain of sale of its franchise as ultra vires; First Nat. Bank v. Guardian Trust Co., 187 Mo. 526, 86 S. W. 117, 70 L. R. A. 79, where corporation executed note to enable comaker to obtain loan and payee parted with money, in action on note defense of ultra vires not available. See 111 Am. St. Rep. 323, note.

Denied in Drainage Com. v. National Contracting Co., 136 Fed. 785, 786, in action by drainage commission to recover profits wrongfully made by contractor for public improvement by substituting cheaper materials for those specified, defense of ultra vires not available.

Syl. 8 (IX, 424). Estoppel—Inconsistent positions in actions.

Approved in Moore v. Beiseker, 147 Fed. 375, where contract for sale of lands required one-third cash in thirty days, balance to be secured by mortgage, and vendor to convey in thirty days, and deliver complete abstracts, and plaintiff paid earnest, but defendant failed to deliver abstracts in thirty days, but delivered them in next nine months, failure to tender one-third price in thirty days did not terminate contract; Kansas Union etc. Ins. Co. v. Burman, 141 Fed. 842, where insurance agent under salary contract and commissions resigns, specifying grounds therefor, he cannot, in subsequent suit against company for breach of contract, allege other grounds for resignation; Illinois etc. R. R. Co. v. Seitz, 214 Ill. 356, 105 Am. St. Rep. 108, 73 N. E. 587, in trover against carrier for goods sold to pay freight, carrier cannot defend on ground that plaintiff is not consignee or assignee of bill of lading where refusal to deliver based on ground that additional freight not paid; Gibson v. Brown, 214 Ill. 341, 73 N. E. 582, one placing refusal to perform contract for exchange of realty on specific ground is estopped in subsequent litigation to set up other grounds for refusal; Farmers' Milling Co. v. Mill Owners' etc. Ins. Co., 127 Iowa, 318, 103 N. W. 208, where, after loss, insurer denied liability because of insurer's failure to pay assessment, he cannot, after suit, defend on ground that policy had been canceled by discretion of directors; Stanton v. Barnes, 72 Kan. 544,

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84 Pac. 117, where vendor refuses to complete sale made by agent on ground that property belonged to another, and employment of agent denied, inability of purchaser to pay cash cannot be urged at trial; Sandefur v. Hines, 69 Kan. 171, 76 Pac. 446, applying principle where vendor refused to complete sale; Redinger v. Jones, 68 Kan. 637, 75 Pac. 1001, debtor who, before sale, demands of sheriff return of property as exempt, and objects to sale on same grounds, and who sues sheriff and purchaser for return of property as exempt, cannot on trial show sale is void on other grounds; Reiger v. Faber, 116 Mo. App. 129, 92 S. W. 184, where after sale under trust deed grantor filed statutory bond, and sued to enjoin beneficiary from taking possession, and latter denied validity of bond, he could not thereafter sue on bond as valid; Morrison v. Atkinson, 16 Okl. 575, 85 Pac. 473, where one assumes position in district court, he is estopped from denying legality of that position on appeal; dissenting opinion in Western Union Telegraph Co. v. Thompson, 144 Fed. 584, majority holding amendment of complaint for malicious prosecution by substituting for allegation that plaintiff was arrested on warrant, allegation that she was arrested and held without warrant, rendered erroneous instruction based on theory that action was for malicious prosecution; dissenting opinion in Jones v. Stoddart, 8 Idaho, 227, 67 Pac. 654, majority holding one claiming to be purchaser of negotiable note need not show formal resolution of directors directing president to indorse note.

96 U. S. 271-278, 24 L. 815, TOWNSHIP OF ROCK CREEK v. STRONG.

Syl. 2 (IX, 426). Municipal bond statute—Directory provisions.

Approved in dissenting opinion in Wright v. East Riverside Irr. Dist., 138 Fed. 325, majority holding void California irrigation bonds delivered after date which they bore.

96 U. S. 312-316, 24 L. 816, SAN ANTONIO v. MEHAFFY.

Syl. 6 (IX, 430). Statutes—Title.

Approved in Riley v. Charleston Union Station Co., 71 S. C. 488, 110 Am. St. Rep. 585, 51 S. E. 496, upholding act of 1902, incorporating union depot company.

96 U. S. 316-324, 24 L. 630, McGARRAHAN v. MINING CO.

Syl. 2 (IX, 431). Statute requiring countersigning of patent mandatory.

Approved in Wright v. East Riverside Irr. Dist., 138 Fed. 321, holding void California irrigation bonds delivered after date which they bore; McLeod v. Lloyd, 43 Or. 270, 71 Pac. 798, where abstract of title shows patent, though it does not show it countersigned by recorder, it is presumed that it was so countersigned.

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96 U. S. 328-331, 24 L. 818, PULLMAN v. UPTON.

Syl. 2 (IX, 433). Increase of capital stock—Who questions.

Approved in First Nat. Bank v. Wyoming Val. Ice Co., 136 Fed. 469, failure of Pennsylvania corporation to pay tax on increased issue of stock was waived by subsequent acceptance of tax.

Syl. 4 (IX, 433). Pledgee of corporate stock—Calls.

Cited in Merchants' Nat. Bank v. Wehrmann, 202 U. S. 301, 50 L. 1040, 26 Sup. Ct. 613, arguendo.

Syl. 5 (IX, 434). Corporations—Capital fund for debts.

Approved in Reid v. Detroit Ideal Paint Co., 132 Mich. 530, 94 N. W. 4, agreement whereby creditor of corporation agrees to take certain amount of new stock and apply it on his claim on condition that stock be increased certain amount is binding.

Distinguished in In re Remington etc. Motor Co., 139 Fed. 776, where New Jersey corporation contracted with board of trade to sell it stock at less than par, and latter was to furnish former free site for buildings, and stock issued as fully paid up, stock was not assessable in favor of creditors.

96 U. S. 332-339, 24 L. 775, PEUGH v. DAVIS.

Syl. 1 (IX, 435). Declaring deed mortgage.

Approved in Weiseham v. Hocker, 7 Okl. 253, 54 Pac. 465, following rule; Harrington v. Atlantic etc. Telegraph Co., 143 Fed. 336, where owner of patents transferred patents to controlling stockholder of corporation acting in its behalf, accompanied by directions that patents should not be transferred to corporation until it delivered stock to owner, but stockholder conveyed patents in violation of agreement, corporation took no title and was liable for infringement for use of patented devices; Wells v. Geyer, 12 N. D. 322, 96 N. W. 291, absolute deed and contemporaneous agreement to sell and reconvey lands between same parties for equal considerations, repayment to be made in future payments with interest, is mortgage; Berner v. German State Bank, 125 Iowa, 440, 101 N. W. 157, arguendo.

Syl. 2 (IX, 436). Parol to show deed mortgage.

Approved in Weiseham v. Hocker, 7 Okl. 254, 255, 54 Pac. 465, following rule; Stitt v. Rat etc. Lumber Co., 96 Minn. 32, 104 N. W. 563, applying rule where mortgagor did not at time have title to land, and title was put in name of third party.

Syl. 3 (IX, 436). Mortgage waiving equity of redemption.

Approved in Bunn v. Beaswell, 139 N. C. 142, 51 S. E. 930, consent judgment declaring defendant shall stand absolutely debarred of all equity in land does not deprive defendant of right to redeem; Wells v. Geyer, 12 N. D. 323, 96 N. W. 291, subsequent agreement by mortgagor in possession to surrender possession and relinquish

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right to redeem, made by mutual mistake and without consideration, is unenforceable; Keller v. Kirby, 34 Tex. Civ. 405, 78 S. W. 83, where deed absolute in form is executed as mortgage it cannot pass title to mortgagee by parties subsequently canceling evidence of indebtedness and making parol agreement that deed shall convey title.

96 U. S. 340, 341, 24 L. 644, DIAL v. REYNOLDS.

Syl. 1 (IX, 438). Enjoining state court.

Approved in Security Trust Co. v. Union Trust Co., 134 Fed. 302, where state court had jurisdiction over foreclosure of mortgage and appointed receiver and decreed sale, federal court could not restrain sale at instance of parties claiming lien on part of property.

Syl. 2 (IX, 439). Foreclosure—Rights of adverse claimants.

Approved in Tinsley v. Atlantic Mines Co., 20 Colo. App. 65, 77 Pac. 13, where, in simple foreclosure, party made defendant under allegation that he held interest subject to mortgage, disclaimed alleging he claimed under paramount title by tax lien, he could not be compelled to litigate title in such action; Brown v. Atlantic etc. Bldg. & Loan Assn., 46 Fla. 495, 35 So. 404, holder of tax deed to mortgaged premises claiming title adverse and paramount to both mortgagor and mortgagee is not party defendant to foreclosure.

96 U. S. 341-353, 24 L. 659, HITCHCOCK v. GALVESTON.

Syl. 1 (IX, 440). Municipal contracts—Authority to mayor.

Approved in Earl v. Bowen, 146 Cal. 764, 81 Pac. 137, upholding order of council directing clerk to sign contract for city; Hett v. Portsmouth, 73 N. H. 336, 61 Atl. 597, formal vote for mayor and alderman adopting street improvement contract made by special committee makes contract valid though appointment of special committee was illegal; Jones v. Holzapfel, 11 Okl. 414, 68 Pac. 514, under statute authorizing city to provide for construction of sewers and apportion cost of labor and material, council may contract therefor.

Distinguished in Bluffton v. Miller, 33 Ind. App. 530, 70 N. E. 993, under Burns' Ann. St. 1901, § 3508, contract for street improvements which left character of improvement and nature of some of materials to engineer was invalid.

Syl. 2 (IX, 440). Municipal debt limit.

Approved in Coles Co. v. Goehring, 209 Ill. 156, 70 N. E. 613, constitutional provision prohibiting county authorities from assessing taxes exceeding seventy-five cents on one hundred dollars valuation unless authorized by vote of people does not limit power of county to incur indebtedness.

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Syl. 3 (IX, 441). Municipal contract—Enjoyment of benefits.

Approved in Mankato v. Barber Asphalt Pav. Co., 142 Fed. 335, 348, action against city for amount of contract price of street improvements because of its repeal to levy special assessment on abutting property is not founded on debt within statute fixing limit of indebtedness; Gilman v. Fernald, 141 Fed. 944, where municipality having power to borrow money but not to issue negotiable bonds borrowed sum which it used for authorizing purpose and issued negotiable bonds therefor, lender could recover money lent; Chelsea Sav. Bank v. City of Ironwood, 130 Fed. 412, 66 C. C. A. 230, where city sold bonds which were within its power and received part of purchase price, but they were subsequently declared invalid for irregularity, city liable for amount received; Coles Co. v. Goehring, 209 Ill. 169, 170, 70 N. E. 613, county is liable for contract price of courthouse though anticipation warrants issued on work are void where it had accepted building; Marion Water Co. v. City of Marion, 121 Iowa, 322, 96 N. W. 888, applying rule to hydrant rental contract made with water company which was by ordinance authorized to construct works; Fidelity Ins. Co. v. German Sav. Bank, 127 Iowa, 596, 103 N. W. 960, where insurance company received bank stock, certificates of deposit and cash in payment of deposit in insolvent bank, it cannot repudiate transaction after its execution on ground of ultra vires; Citizens' Bank v. Spencer, 126 Iowa, 106, 101 N. W. 645, act of city council in making contract without authority does not estop city; First Nat. Bank v. Guardian Trust Co., 187 Mo. 528, 86 S. W. 118, 70 L. R. A. 79, where corporation executed note to enable comaker to obtain loan, and payee parted with money, in action on note, defense of ultra vires not available; Pine Tree Lumber Co. v. Fargo, 12 N. D. 372, 377, 96 N. W. 361, 363, city may render itself generally liable on contract for special improvements; State v. Knoxville, 115 Tenn. 184, 90 S. W. 292, where emunerators made false reports as to scholastic population, whereby city received moneys in excess of its legal allotment, state could recover moneys so received and expended by city.

96 U. S. 360-366, 24 L. 819, UNITED STATES v. SIMMONS.

Syl. 2 (IX, 445). Indictment for statutory crime.

Approved in Burton v. United States, 202 U. S. 373, 50 L. 1067, 26 Sup. Ct. 688, upholding indictment under Rev. St., § 1782, punishing receipt of compensation by senator for services before any department in matter in which United States is interested; Miller v. United States, 136 Fed. 581, 582, 69 C. C. A. 355, indictment under Rev. St., § 4746, charging defendant with causing presentation of false writing to pension commissioner, is bad where it does not allege manner of presentation or name of person who presented it; Wong Din v. United States, 135 Fed. 704, 68 C. C. A. 340, upholding indictment for conspiracy to aid in landing Chinamen.

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Syl. 3 (IX, 446). Indictment—Names unknown.

Approved in United States v. Green, 136 Fed. 644, holding insufficient indictment under Rev. St., § 5451, for bribing federal officer by tendering him a check.

Syl. 8 (IX, 447). Indictment—Defrauding government—Means.

Approved in Sprinkle v. United States, 141 Fed. 814, 815, where defendants were jointly indicted with others for engaging in rectifying business in names of companies organized to defraud government of tax, statements by defendants not on trial are admissible to show intent though conspiracy not charged; United States v. Manufacturing Apparatus etc. New Jersey Churning Co., 141 Fed. 476, upholding information for forfeiture of oleomargarine plant under Comp. St. 1901, p. 2234, for defrauding government of tax on oleomargarine produced.

96 U. S. 369-378, 24 L. 853, EX PARTE SCHOLLENBERGER.

Syl. 1 (IX, 448). Foreign corporation—Process agent.

Approved in Kibbler v. St. Louis etc. R. Co., 147 Fed. 881, 882, foreign corporation which under state laws can be sued in state courts only in counties in which it does business is not suable in federal court in state unless it does business in one of counties within district.

Syl. 6 (IX, 453). Corporations—Business in other state—Process.

Approved in Old Wayne etc. Assn. v. McDonough, 164 Ind. 327, 328, 73 N. E. 705, 706, upholding Stat. of 1883, requiring foreign insurance companies to file stipulation with insurance commissioner that process served on commissioner or agent specified by company shall be equivalent to personal service on company; Groel v. United Elec. Co., 69 N. J. Eq. 412, 419, 60 Atl. 828, 830, upholding P. L. 1896, p. 307, requiring foreign corporations to designate process agent and holding it applied to cause of action arising in state while corporation was doing business under license, though corporation not doing business in state at time of service.

Syl. 7 (IX, 454). Jurisdiction—Defendant's residence—Waiver.

Approved in Iowa etc. Min. Co. v. Bliss, 144 Fed. 449, 450, 451, where alien sued nonresident in state court, defendant could remove suit without plaintiff's consent; Morris v. Clark Const. Co., 140 Fed. 757, state action by alien against citizen of another state is removable to federal court by defendant; Wolff v. Choctaw etc. R. Co., 133 Fed. 602, suit against corporation created in another state cannot be maintained in federal district where it does business where plaintiff is not citizen or resident of such district.

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96 U. S. 379-388, 24 L. 668, WISCONSIN v. DULUTH.

Syl. 1 (IX, 456). Harbor improvements—Injunction.

Approved in Missouri v. Illinois, 200 U. S. 526, 50 L. 581, 26 Sup. Ct. 268, refusing to enjoin discharge of Chicago sewage through artificial canal from Lake Michigan into Mississippi river at instance of Missouri.

96 U. S. 395-404, 24 L. 637, DOBBIN'S DISTILLERY v. UNITED STATES.

Syl. 1 (IX, 458). Forfeiture for violating revenue laws.

Approved in The Frolic, 148 Fed. 923, chronometer on vessel seized for violation of Chinese Exclusion Act is forfeitable though leased to owner of vessel; United States v. One Black Horse, 147 Fed. 771, under Rev. St., §§ 3061-3063, team used in transportation of smuggled goods forfeitable though owner did not know of purpose of use; Scow No. 36, 144 Fed. 934, under Comp. St. 1901, pp. 3542, 3544, vessel used in depositing refuse in navigable waters forfeitable though so used without knowledge of owner.

Distinguished in Moody v. McKinney, 73 S. C. 442, 53 S. E. 545, where owner did not know or consent to use of team to transport liquor in night-time, it is not seizable under Cr. Code, § 594.

96 U. S. 404-421, 24 L. 746, McPHERSON v. COX.

Syl. 2 (IX, 459). State of frauds—Lawyer's contingent contract.

Approved in American Fine Art Co. v. Simon, 140 Fed. 536, oral contract modifying writing which conferred on defendant privilege of dividing deliveries into two annual installments, work required thereafter to be distributed for next two years is not within statute.

96 U. S. 430-432, 24 L. 703, BAIRD v. UNITED STATES.

Syl. 2 (IX, 461). Suit for part of demand as bar.

Approved in Nixon v. Fidelity & Deposit Co., 150 Fed. 576, where petition against bankrupt whose property is seized is dismissed and he makes no claim for damages, he cannot thereafter make further claim therefor against petitioners and sureties under Bankr. Act, § 69a; Russell v. Russell, 134 Fed. 841, 67 C. C. A. 436, question expressly determined by court whose decree is affirmed on appeal is res adjudicata though question not considered on appeal; Mallory v. Dawson Cotton Oil Co., 32 Tex. Civ. 298, 74 S. W. 955, where contract provided for payment of sum for construction of building according to plans and that cost of alterations be added or deducted from price, contractor could maintain separate suits by filing mechanic's lien for contract price and omitting extras.

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96 U. S. 432-449, 24 L. 760, MURRAY v. CHARLESTON.

Syl. 2 (IX, 462). Taxation—Debt due nonresident.

Distinguished in New York v. State Board of Tax Commrs., 199 U. S. 42, 105 Am. St. Rep. 703, 50 L. 77, 25 Sup. Ct. 715, reduction, on account of annual payments in nature of tax covered by existing agreement, made by N. Y. Laws 1899, c. 712, from special franchise tax provided for by such statute does not render statute invalid.

Syl. 4 (IX, 462). Taxation—City's stock indebtedness.

Approved in State ex rel. Louisiana Imp. Co. v. Board of Assessors, 111 La. 986, 993, 994, 997, 999, 36 So. 92, 95, 97, certificates of indebtedness of municipality are not taxable by it.

Syl. 6 (IX, 463). Contracts by states—Impairment.

See 101 Am. St. Rep. 162, note.

96 U. S. 450-461, 24 L. 752, RAILROAD CO. v. VANCE.

Syl. 2 (IX, 465). Domesticating foreign corporation.

Approved in Russell v. St. Louis etc. Ry. Co., 71 Ark. 454, 457, 75 S. W. 727, 728, railroad organized in sister state on complying with Acts 1889, p. 43, could exercise eminent domain.

96 U. S. 467-491, 24 L. 779, CASEY v. CAVAROC.

Syl. 2 (IX, 466). Possession necessary to pledge.

Approved in Third Nat. Bank v. Buffalo German Ins. Co., 193 U. S. 588, 48 L. 803, 24 Sup. Ct. 254, applying rule to pledge of bank stock; Security Warehousing Co. v. Hand, 143 Fed. 41, where bankrupt leased space in building to warehouse company, which space was inclosed by open paling and bankrupt's servants were warehouse custodians, pledge of warehouse receipts by bankrupt did not pass title to goods; Ryttenberg v. Schefer, 131 Fed. 322, where parties attempted by agreement to give one factor's lien on goods of other, but by possession remained in debtor, equitable lien does not arise; Harding v. Eldridge, 186 Mass. 43, 71 N. E. 116, 117, where owner of piano gave note combined with statement of pledge of piano as security with power of sale on default, but no delivery of piano made, no pledge resulted; Jackson v. Kincaid, 4 Okl. 570, 46 Pac. 593, where pledgees took merchandise pledged and opened it for sale in building rented by debtors and in same name in which debtors ran business at another place, and debtors brought new goods and placed them in stock, and all sold in course of trade and proceeds used for rents, fixtures, etc., and balance deposited to credit of debtors, pledge was fraudulent as to attaching creditors.

Syl. 3 (IX, 467). Pledge—Redelivery to pledgor—Temporary purpose.

Approved in Bush v. Export Storage Co., 136 Fed. 932, where manufacturing corporation leased part of building to warehouse company

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and stored materials therein, receiving receipts therefor, pledge of receipts carried good title.

Syl. 6 (IX, 468). Equities against assignee for creditors.

Approved in English v. Ross, 140 Fed. 635, arguendo.

96 U. S. 499-513, 24 L. 836, MAINE CENT. R. R. CO. v. MAINE.

Syl. 1 (IX, 469). Tax exemption—Consolidation of corporations.

Approved in San Antonio Traction Co. v. Altgelt, 200 U. S. 309, 50 L. 494, 26 Sup. Ct. 261, contract exemption from rate regulation possessed by street railroad chartered prior to Texas Const. 1876, § 17, Bill of Rights subjecting all privileges to legislative control was lost by foreclosure sale to another corporation, under city ordinance granting purchaser all privileges granted to old company.

Distinguished in Lee v. Atlantic Coast Line R. Co., 150 Fed. 790, construing agreement between railroads as merged and not a consolidation.

Syl. 3 (IX, 470). Reserved power to alter corporate rights.

Approved in Rochester v. Rochester Ry. Co., 182 N. Y. 118, 74 N. E. 959, 70 L. R. A. 773, where street railway had statutory exemption for expense of repaving between tracks, exemption did not pass to its lessee; Gladding v. Saint Matthew Church, 25 R. I. 634, 105 Am. St. Rep. 904, 57 Atl. 863, 65 L. R. A. 225, where bequest made to church for mutes, but before testatrix's death church consolidated with another, which carried on identical work through a department, new church not entitled to bequest.

96 U. S. 513-520, 24 L. 732, ATHERTON v. FOWLER.

Syl. 2 (IX, 472). Public lands—Breaking into inclosure.

Approved in Commager v. Dicks, 1 Okl. 88, 28 Pac. 866, where defendant entered on land and made application for entry which was refused as conflicting with prior entry, and later plaintiff made homestead entry and received receipt, latter could not maintain unlawful detainer; Reservation State Bank v. Holst, 17 S. D. 244. 95 N. W. 932, 70 L. R. A. 799, where applicant for land subject to homestead entry is permitted to enter same, there can be no rightful occupation of part of land by another as against him.

Syl. 5 (IX, 473). Pre-emption—Forcible intrusion.

Approved in McMichael v. Murphy, 12 Okl. 165, 70 Pac. 193, following rule; Clipper Min. Co. v. Eli Min. etc. Co., 194 U. S. 230, 48 L. 951, 24 Sup. Ct. 632, entry on prior valid placer location for prospecting for unknown lodes initiates no title to lode claims thus located within exterior boundaries of placer claim; Willitt v. Baker, 133 Fed. 947, where locators of mining claim were at work thereon on December 31st, and left tools thereon in order to resume work in

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morning, one making relocation in night is trespasser; Bulette v. Dodge, 2 Alaska, 431, applying rule to placer claim; Walsh v. Ford, 1 Alaska, 153, applying rule to possession of town lots; Tidwell v. Chiricahua Cattle Co., 5 Ariz. 365, 53 Pac. 196, where intruder, without consent of owner, entered and took possession of premises during temporary absence of owner, fact that entry was peaceful and without force is immaterial; Weed v. Snook, 144 Cal. 443, 77 Pac. 1025, prior locators of oil lands in possession and actively erecting works for drilling are protected against subsequent entry prior to actual discovery of oil; Downman v. Saunders, 3 Okl. 234, 41 Pac. 107, one who by force enters into possession of another on townsite and ejects him and prevents him from making further improvements cannot defect him from acquiring title on account of meagerness of improvements; dissenting opinion in Sproat v. Durland, 2 Okl. 58, 35 Pac. 890, majority upholding jurisdiction on cross-complaint on application by homesteader to enjoin adverse claimant for interfering with possession, to enjoin homesteader from interfering with defendant's possession; Balsz v. Liebenow, 4 Ariz. 231, 36 Pac. 210, Woodruff v. Wallace, 3 Okl. 366, 41 Pac. 361, and Adams v. Couch, 1 Okl. 37, 33, 26 Pac. 1016, all arguendo.

Distinguished in Crawford v. Burr, 2 Alaska, 38, where at time military reservation abandoned plaintiff was in possession of stable thereon without any fixed boundaries, he was limited to land actually occupied by stable as against subsequent townsite claimants; dissenting opinion in Dwinnell v. Dyer, 145 Cal. 30, 78 Pac. 250, majority holding where defendant claimed under location made while state statute in force, but which was perfected under Revised Statutes after repeal of state statute, he had good title as against subsequent locator.

96 U. S. 521-529, 24 L. 734, RICHMOND ETC. R. R. CO. v. RICHMOND.

Syl. 1 (IX, 474). City's reservation of control over railroad.

Approved in Blair v. Chicago, 201 U. S. 457, 50 L. 825, 26 Sup. Ct. 427, construing authority of Chicago under Ill. Acts of Feb. 14, 1859, relative to term of street railway franchises.

Syl. 3 (IX, 475). Power to govern implies police regulations.

Approved in Norfolk etc. R. R. Co. v. Commonwealth, 103 Va. 293, 49 S. E. 40, where transportation company placed cars on individual track scales on spur tracks, corporation commission could regulate rates for placing cars on scales; Newport News etc. Ry. Co. v. Hampton Roads Ry. etc. Co., 102 Va. 802, 47 S. E. 842, where street-car company had right to put double track on street which was subsequently included in city limits, but used only single track, city could grant another company right to double track same street; Petersburg v. Petersburg Aqueduct Co., 102 Va. 659, 47 S. E. 849,

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city may prohibit water company chartered when city was sparsely settled from digging up and obstructing streets in extending its limits.

Syl. 5 (IX, 475). Taking—Regulation of use of property.

See 109 Am. St. Rep. 640, note.

Syl. 6 (IX, 476). Laws should operate generally.

Approved in Toney v. Macon, 119 Ga. 87, 46 S. E. 82, upholding act extending city limits though penalty for not making sewer connections in new territory was by fine and imprisonment, while by old ordinance in old limits punishment was by fine only.

96 U. S. 530-539, 24 L. 848, MOORE v. ROBBINS.

Syl. 2 (IX, 476). Land Department decides contested rights.

Approved in Kalyton v. Kalyton, 45 Or. 130, 78 Pac. 333, on death of Indian allottee after issuance of first patent, state courts have jurisdiction of action to determine heirs of allottee.

Syl. 3 (IX, 477). Land Department's issuance of patent final.

Approved in Johnson v. Pacific Coast S. S. Co., 2 Alaska, 237, and Adams v. Couch, 1 Okl. 40, 26 Pac. 1016, both following rule; Peyton v. Desmond, 129 Fed. 8, 63 C. C. A. 651, issuance of homestead patent gives patentee right to recover value of timber wrongfully cut and removed from land after initiation of claim and prior to patent; Sage v. Rudnick, 91 Minn. 334, 100 N. W. 108, after filing map of definite location, Interior Department has no jurisdiction to hear adverse claim to land grant, and pendency of controversy therein does not suspend limitations; McDaid v. Territory, 1 Okl. 102, 30 Pac. 441, after issuance of patent by townsite trustees under 26 Stat. 109, no appeal lies to general land office from decision of trustees awarding land to one of several contestants.

Syl. 7 (IX, 479). Land Department's decision conclusive.

Approved in Jones v. Hoover, 144 Fed. 220, 221, 223, equity will interpose to maintain possession where possession is essential to complete purchase under congressional acts relating to sale of public lands, and will review acts of Land Department; Wilbourne v. Baldwin, 5 Okl. 280, 47 Pac. 1050, refusing to restrain Indian agent from removing homestead applicant to whom no patent has issued; King v. Thompson, 3 Okl. 647, 39 Pac. 467, applying rule to decision of townsite trustees; Myers v. Berry, 3 Okl. 619, 41 Pac. 583, applying rule to findings of fact by townsite trustees.

Syl. 8 (IX, 479). Conclusiveness of Land Department's decision on courts.

Approved in Adams v. Couch, 1 Okl. 40, 26 Pac. 1017, following rule; Tegarden v. Le Marchel, 129 Fed. 488, in ejectment in federal court defendant cannot set up equitable title to defeat legal title by

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impeaching government patent; Cummings v. McDermid, 4 Okl. 280, 44 Pac. 278, holding insufficient allegations of fraud in petition to set aside award of townsite board.

Syl. 9 (IX, 481). Mistake—Review of land decision.

Approved in Parker v. Lynch, 7 Okl. 649, 56 Pac. 1088, following rule; Southern Pac. R. R. Co. v. United States, 200 U. S. 351, 50 L. 511, 26 Sup. Ct. 296, upholding equitable jurisdiction over bill by government to cancel patents erroneously issued and discovery of sales to bona fide purchasers of grantee and confirmation of titles; Le Marchel v. Tegarden, 133 Fed. 827, one attacking patent for mistake of fact must plead and prove evidence before department from which mistake resulted, particular mistake made, and way in which it occurred; Thompson v. Ferry, 6 Ariz. 306, 56 Pac. 743, where mortgage of mining claims executed by cotenant was foreclosed and premises purchased by mortgagee, who conveyed to one who relocated claims and obtained patents, cotenants are estopped after ten years' delay from asserting trust; dissenting opinion in Paine v. Foster, 9 Okl. 261, 60 Pac. 25, majority refusing to consider evidence before Secretary of Interior on appeal from decision of local land office.

Distinguished in Paine v. Foster, 9 Okl. 226, 53 Pac. 1112, refusing to review evidence before Secretary of Interior on appeal from local land office.

96 U. S. 544-549, 24 L. 674, UNION MUT. INS. CO. v. MOWRY.

Syl. 2 (IX, 484). Insurance—Previous negotiations merged in policy.

Approved in Lefler v. New York Life Ins. Co., 143 Fed. 817, in action on life policy evidence of negotiations preceding its execution are inadmissible to contradict it; Connecticut Fire Ins. Co. v. Buchanan, 141 Fed. 889, 890, where insurance policy covered building only while used and occupied as normal school, oral evidence that parties intended policy to cover building when not so used is inadmissible; Weidemann v. Springfield Breweries Co., 78 Conn. 664, 63 Atl. 164, where mortgagor assigned to mortgagee claim for unpaid insurance, which was to be applied to mortgage, but later agreement provided for its application to general indebtedness of mortgagor to mortgagee, latter not estopped as to second mortgagee from so applying money; Calmenson v. Equitable etc. Ins. Co., 92 Minn. 391, 100 N. W. 88, applying rule where policy avoided insurance in case of subsequent insurance and insurer claimed agent told him he could take insurance in other company; Liverpool etc. Ins. Co. v. Richardson Lumber Co., 11 Okl. 582, 600, 69 Pac. 937, 942, where policy insuring lumber provided for clear space between lumber and mills, and agents who examined property knew of its condition, clause not waived; Young v. St. Paul etc. Ins. Co., 68 S. C. 390, 47 S. E. 682, provision in policy against other insurance not affected by failure of agent to mention other insurance in preliminary negotiations; Law-

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rance v. Ward, 28 Utah, 132, 77 Pac. 230, where note secured by mortgage provided for payment of interest quarterly at certain bank and on default principal to become due at holder's option, and he told obligor not pay at bank but he would call for interest, failure to call waived forfeiture.

Distinguished in Allesina v. London Ins. Co., 45 Or. 443, 78 Pac. 392, where policy issued on oral application and no information requested or given as to chattel mortgage, and insured did not know policy to be issued contained clause avoiding insurance of mortgage existed, insurer waived mortgage clause.

96 U. S. 549-556, 24 L. 676, SCHUMACHER v. CORNELL.

Syl. 1 (IX, 486). Patent for combination—Abandonment of part.

Approved in Brookfield v. Elmer Glass Wks., 132 Fed. 312, holding Kribs patent No. 542,565, for improvements in presses for making screw insulators, not so clearly infringed as to warrant preliminary injunction.

96 U. S. 567-572, 24 L. 792, UNITED STATES v. KAUFMAN.

Syl. 2 (IX, 487). Conclusiveness of allowance for revenue stamps.

Approved in Christie-Street Com. Co. v. United States, 136 Fed. 329, 330, 69 C. C. A. 464, claim to recover back internal revenue taxes exacted under misconstruction of revenue act of 1898, may be enforced by action against United States under 24 Stat. 505, after its presentation to internal revenue commissioner.

Distinguished in United States v. Hyams, 146 Fed. 19, under Comp. St. Supp. 1905, p. 445, relating to rebates on tobacco tax, provision in revenue regulations making it prerequisite to recovery of rebate that proofs offered to executive officers should be satisfactory to them is void.

96 U. S. 572-580, 24 L. 841, NEW YORK LIFE INS. CO. v. EGGLESTON.

Syl. 1 (IX, 488). Estoppel to claim forfeiture of policy.

Approved in Battin v. Northwestern Mut. L. Ins. Co., 130 Fed. 876, 877, 65 C. C. A. 358, declaration on life policy alleging that on maturity of certain premium insured paid sum of account and received credit for balance, shows waiver of provision that policy shall cease if premium not paid when due; Washburn v. Union etc. Ins. Co., 143 Ala. 489, 38 So. 1012, where insurer accepted note for premium and after default in paying same retained it and insisted on its payment, it waived forfeiture of policy; Travelers' Ins. Co. v. Brown, 138 Ala. 529, 35 So. 464, where former premiums paid to agent by check, insurer cannot forfeit policy for nonreceipt of check sent to agent; Rutherford v. Prudential Ins. Co., 34 Ind. App. 539, 73 N. E. 205, provision of policy that if premium not called for when due holder must send it to home office is waived if not insisted on dur-

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ing life of insured; Foresters of America v. Hollis, 70 Kan. 75, 78 Pac. 161, applying rule where beneficiary association assessments not paid when due; Graham v. Security Mut. Life Ins. Co., 72 N. J. L. 304, 62 Atl. 683, holding forfeiture of policy for nonpayment of premium when due waived; Gish v. Insurance Co. of North America, 16 Okl. 74, 87 Pac. 873, determining question of waiver of iron-safe clause; Aetna Life Ins. Co. v. Fallow, 110 Tenn. 729, 77 S. W. 939, where accident policy provided there should be no insurance thereunder unless premium paid prior to accident, but general agent told insured to hold premiums till collector called, insurer estopped to deny liability; Foreman v. German Ins. Assn., 104 Va. 698, 52 S. E. 338, 2 L. R. A. (N. S.) 444, where one was agent of insurer and also of insured, knowledge of vacancy of property acquired by agent while acting for insured only is not notice to insurer sufficient to constitute waiver of forfeiture.

96 U. S. 580-587, 24 L. 678, BISSELL v. HEYWARD.

Syl. 1 (IX, 490). Testator's contract to sell devised property.

Approved in Brooke v. Eastman, 17 S. D. 347, 96 N. W. 701, purchaser of school lands who had made first payment and received contract of sale from commissioners had interest in lands subject to execution.

96 U. S. 588-593, 24 L. 737, MUTUAL LIFE INS. CO. v. BRUNE.

Syl. 2 (IX, 491). Abatement—Action in other jurisdiction.

Approved in Schmidt v. Posner, 130 Iowa, 348, 106 N. W. 761, following rule; Slaughter v. Mallet Land etc. Co., 141 Fed. 290, pendency in state court of action of trespass to try title and to remove cloud is not ground for abatement of subsequent federal suit to quiet title; Franklin v. Conrad-Stanford Co., 137 Fed. 741, 744, 70 C. C. A. 171, foreclosure of mortgage securing note in which property was sold and proceeds applied on amount due on note, but in which no deficiency judgment rendered, is no bar to action on note in another jurisdiction to recover deficiency; German Savings & Loan Soc. v. Tull, 136 Fed. 12, 69 C. C. A. 1, pendency of suit in state court cannot be pleaded in bar of suit in federal court; National Tube Co. v. Smith, 57 W. Va. 216, 110 Am. St. Rep. 776, 50 S. E. 719, 1 L. R. A. (N. S.) 195, refusing to restrain prosecution of garnishment before justice, though in another state injunction restraining garnishee from paying money under judgment of justice.

96 U. S. 595-611, 24 L. 793, EDWARDS v. KEARZEY.

Syl. 2 (IX, 492). Remedy as part of contract obligation.

Approved in Gamble v. Rural etc. School Dist., 146 Fed. 118, Iowa statute limiting recovery on negotiable paper procured by fraud to amount paid by holder does not apply where bona fide holder of fraudulent outstanding school bond sold same after maturity for less

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than par; Harrison v. Remington Paper Co., 140 Fed. 392, holding Laws Kan. 1898, c. 10, p. 27, repealing prior acts granting corporation creditors individual action against stockholder, and substituting action by receiver to be appointed, void as against contracts made prior to its passage; Myers v. Knickerbocker Trust Co., 139 Fed. 116, holding Maryland act of 1904, repealing prior act giving creditor separate action to enforce stockholder's liability, and substituting therefor bill in equity on behalf of all creditors against all stockholders, void as applied to creditors who sued prior to passage of act; Lamb v. Powder Riv. etc. Stock Co., 132 Fed. 439, 440, 441, 67 L. R. A. 558, 65 C. C. A. 570, Colo. Sess. Laws 1895, p. 239, c. 106, as amended in 1899, relating to limitations on actions on foreign judgments, is void as to judgment prior to passage of act; Welsh v. Cross, 146 Cal. 624, 627, 333, 106 Am. St. Rep. 63, 81 Pac. 230, 231, 233, where time for redemption of realty from execution sale was changed after judgment but before levy and sale, it does not apply to redemption from such sale; State ex rel. Louisiana Imp. Co. v. Board of Assessors, 111 La. 1001, 36 So. 98, municipal certificates of indebtedness are not taxable by city; State v. District Court, 90 Minn. 464, 97 N. W. 135, upholding Duluth Charter, § 80, providing for appeal to district court from action of council allowing or disallowing claim against city; Smith v. Jennings, 67 S. C. 337, 45 S. E. 826, joint resolution requiring state treasurer to write off books as obligations of state certain past due bonds, not law impairing contract obligations; Lewis v. Goldthwaite Nat. Bank, 36 Tex. Civ. 440, 81 S. W. 799, Laws 1897, p. 131, exempting from garnishment for six months after sale proceeds of voluntary sale of homestead, applies to debts existing prior to passage of act.

96 U. S. 611-619, 24 L. 855, HAYWARD v. ELIOT NATIONAL BANK.

Syl. 1 (IX, 496). Equity—Lapse of time—Limitations.

Approved in Patterson v. Hewitt, 195 U. S. 319, 49 L. 218, 25 Sup. Ct. 35, affirming 11 N. M. 20, 21, 27, 33, 66 Pac. 557, 559, 561, 55 L. R. A. 658, and holding eight years' delay after right to deed of interest in mining claim acquired by contribution to expense necessary to obtain patent, bars right where complainant contributed nothing to development; Bryan v. Dupoyster, 130 Fed. 87, 64 C. C. A. 417, holding instrument in nature of mortgage executed by trustee created no lien on land enforceable after death of cestui que trust who had only life estate; Cole v. Birmingham Union Ry. Co., 143 Ala. 434, 39 So. 405, suit by stockholder of street railway to set aside for ultra vires sale of its property to another company for shares of its stock is barred ten years after transfer and two years after knowledge thereof; Lockhart v. Leeds, 195 U. S. 437, 49 L. 269, 25 Sup. Ct. 76, arguendo.

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96 U. S. 619-626, 24 L. 740, GREGORY v. MORRIS.

Syl. 1 (IX, 497). Vendor's purchase money lien—Delivery.

Approved in Cincinnati Tobacco etc. Co. v. Leslie, 117 Ky. 485, 78 S. W. 415, 64 L. R. A. 219, where corporation advanced money to bankrupt to buy tobacco to be shipped to it for sale under agreement that it was to have lien on tobacco, its lien passed to its successors.

96 U. S. 627-640, 24 L. 858, BRINE v. HARTFORD FIRE INS. CO.

Syl. 2 (IX, 498). Law governing land transfers.

Approved in Bradley v. Lightcap, 195 U. S. 20, 49 L. 73, 24 Sup. Ct. 748, holding Ill. Act March 22, 1872, § 30, providing that master's deed be taken out by foreclosure purchaser within certain time after expiration of redemption period, is void as to one bidding in property prior to act.

Syl. 3 (IX, 500). State law controls federal procedure.

Approved in Southern Pac. Co. v. Western Pac. Ry. Co., 144 Fed. 179, determining title to Oakland waterfront.

Syl. 4 (IX, 500). Impairment of contract obligations.

Approved in Harrison v. Remington Paper Co., 140 Fed. 391, 392, holding Laws Kan. 1898, c. 10, p. 27, repealing prior acts granting corporation creditors individual action against stockholder and substituting action by receiver to be appointed, void as against contracts made prior to its passage; Welsh v. Cross, 146 Cal. 624, 106 Am. St. Rep. 63, 81 Pac. 230, where time for redemption of realty from execution sale was changed after judgment but before levy and sale, it does not apply to redemption from such sale: Howard v. Ross, 38 Wash. 631, 80 Pac. 820, Bal. Code, §§ 5148-5150, relating to continuance of judgment liens, cannot apply to judgment recovered after its passage on note executed prior thereto.

Syl. 5 (IX, 501). Equity—Preservation of statutory rights.

Approved in County of Logan v. McKinley etc. Trust Co., 70 Neb. 413, 101 N. W. 993, right to redeem from tax sale may be raised by objection to motion to confirm sale.

Distinguished in County of Logan v. McKinley etc. Trust Co., 70 Neb. 403, 97 N. W. 643, foreclosure decree cannot be assailed for irregularity on motion to set aside sale.

96 U. S. 640-645, 24 L. 648, UNION GOLD MINING CO. v. ROCKY MT. NATIONAL BANK.

Syl. 1 (IX, 501). Bank—Ultra vires loan—Recovery.

Approved in Maryland Trust Co. v. National Mech. Bank, 102 Md. 613, 63 Atl. 72, following rule; Waterbury v. McKinnon, 146 Fed. 739, fact that lender, who was resident of Montana, procured note and mortgage securing same to be executed in name of plaintiff, who was

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Canadian, to avoid mortgage tax, is no defense to foreclosure by plaintiff; Schoonover v. Petcina, 126 Iowa, 268, 100 N. W. 493, where national bank president loaned money secured by mortgage on own account and indorsed notes to bank, president could not be assessed for such notes as moneys and credits.

96 U. S. 659-675, 24 L. 868, KETCHUM v. DUNCAN.

Syl. 2 (IX, 505). Sales—Implied assent.

Approved in Erie City Iron Works v. Thomas, 139 Fed. 996, complaint in action for price of bonds of corporation which alleges plaintiff was induced to sell machinery to corporation and accept bonds in part payment on promise of defendants, who were officers of corporation, to purchase bonds at par in six months, sets up valid contract.

Syl. 5 (IX, 506). Payment of interest coupon by stranger.

Approved in Washington Loan etc. Co. v. Ritz, 37 Wash. 649, 80 Pac. 175, where agent of mortgagee, before interest coupon due, forwarded same, together with amount thereof, to mortgagee, who indorsed order to pay to agent, there was an assignment to agent.

Syl. 6 (IX, 507). Purchase and payment of interest coupons distinguished.

Distinguished in Morton Trust Co. v. Home Telephone Co., 66 N. J. Eq. 110, 111, 57 Atl. 1022, where holder of interest coupons turned them over to president of issuing corporation for payment and cancellation, and was not informed by him that he was purchasing them, there was no sale.

Syl. 8 (IX, 508). Mortgage to secure interest and principal.

Approved in Real Estate Trust Co. v. Union Trust Co., 102 Md. 63, 61 Atl. 233, where certificates are issued entitling holders to bonds to be issued and secured by mortgage, interest accruing on certificates not entitled to priority over principal on foreclosure of mortgage.

96 U. S. 689-698, 24 L. 607, HAWKINS v. UNITED STATES.

Syl. 5 (IX, 510). Acts of agent binding government.

Approved in Hudson v. Mills, 185 Miss. 585, 71 N. E. 65, in action by town on tax collector's bond, evidence that it was reported to selectmen by one of them that surety company told him it did not care to go on bond because collector's reputation bad is inadmissible.

Syl. 7 (IX, 510). Express bars implied promise.

Approved in American Bonding Co. v. Pueblo Inv. Co., 150 Fed. 24, where tenant agreed to make improvements in building and to give bond to fulfill contract and pay for work and materials, so as to save liens, and he gave bond conditioned to perform contract, but bond contained no condition to pay for work and material, surety liable to lessor for amount paid to relieve from lien; Amalgamated Gum Co. v. Casein Co. of

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America, 146 Fed. 911, construing contract by manufacturer of patented paper to sell to defendant as sole customer on condition latter accept specified quantities, but if he did accept such quantities maker could sell to others.

96 U. S. 699-704, 24 L. 875, FELTON v. UNITED STATES.

Syl. 2 (IX, 511). Criminal law—"Knowingly and willfully."

Approved in United States v. Praeger, 149 Fed. 478, civilian who, on advice of counsel, refuses to answer questions before court-martial on ground that they might subject him to prosecution for libel, does not violate Comp. St. 1901, p. 965; State v. Nussenholtz, 76 Conn. 97, 55 Atl. 591, under Pub. Acts 1901, c. 154, punishing willful sale of veal less than four weeks old when killed, instruction that "willfully selling" meant deliberately selling irrespective of motive, is erroneous.

96 U. S. 704-712, 24 L. 805, PRATT v. PRATT.

Syl. 2 (IX, 511). Possession adverse to judgment lien.

Approved in Flanary v. Kane, 102 Va. 557, 46 S. E. 315, Code 1887, § 2915, limiting time to sue for recovery of land, does not apply to suit of judgment creditor to enforce lien against land.

96 U. S. 712-716, 24 L. 641, SAGE v. CENTRAL R. R. CO.

Syl. 3 (IX, 512). Appeal—Acceptance of security and citation.

Approved in Simpson v. First Nat. Bank, 129 Fed. 259, 63 C. C. A. 371, allowance of appeal on condition that petitioner give bond in fixed amount does not become allowance of appeal till bond given and accepted.

Syl. 4 (IX, 513). Appeal—Accepting security in court.

Approved in Lockman v. Lang, 132 Fed. 4, where appeal allowed by taking security within statutory time and transcript filed and case docketed at proper term, failure to file citation within time for appeal is not ground for dismissal of appeal.

96 U. S. 716-723, 24 L. 743, MORGAN v. CHICAGO & ALTON R. R. CO.

Syl. 1 (IX, 514). Estoppel by silence or misrepresentation.

Approved in Marine Iron Wks. v. Wiess, 148 Fed. 155, holding where defendant contracted to build boat of minimum draft and plaintiff knew during progress of work that boat would exceed such draft, but remained silent, plaintiff waived excessive draft; Globe Nav. Co. v. Maryland Casualty Co., 39 Wash. 309, 81 Pac. 830, determining liability on indemnity bond where appeal in action for damages dismissed, through ignorance on part of indemnitor, who authorized dismissal.

96 U. S. 727-737, 24 L. 877, EX PARTE JACKSON.

Syl. 1 (IX, 516). Congressional regulation of postal system.

Approved in Burton v. United States, 202 U. S. 371, 50 L. 1067, 26 Sup. Ct. 688, fraud order inquiry pending before Postoffice Department is proceeding in which United States is interested within Rev. St., § 1782.

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Syl. 6 (IX, 517). Postoffice—Fraud order.

Approved in Public Clearing-House v. Coyne, 194 U. S. 506, 48 L. 1097, 24 Sup. Ct. 789, fraud order directing return of all mail matter directed to fraudulent concerns is valid; Harris v. Rosenberger, 145 Fed. 453, upholding power to issue fraud orders.

96 U. S. 737, 738, 24 L. 881, NATIONAL BANK v. OMAHA.

Syl. 1 (IX, 518). Appeal citation—Acceptance of security in court.

Approved in Lockman v. Lang, 132 Fed. 4, where appeal allowed by taking security within statutory time and transcript filed and case docketed at proper time, failure to file action within time for appeal is not ground for dismissal of appeal; Simpson v. First Nat. Bank, 129 Fed. 259, 63 C. C. A. 371, allowance of appeal on condition that petitioner give bond in fixed amount does not become allowance till bond given and accepted.

XCVII UNITED STATES.

97 U. S. 3-7, 24 L. 985, MILLIGAN ETC. GLUE CO. v. UPTON.

Syl. 1 (IX, 519). Patents—Want of novelty.

Approved in Baker v. Duncombe Mfg. Co., 146 Fed. 748, granulated coffee not patentable merely because process used may produce granules more uniform than otherwise produced; Sanitas Nut Food Co. v. Voight, 139 Fed. 553, holding void Kellogg patent No. 558,393, for cooked wheat product.

Distinguished in Rumford Chem. Wks. v. New York Baking Powder Co., 134 Fed. 386, 67 C. C. A. 367, upholding Catlin patent No. 474,811, for granular baking-powder.

97 U. S. 13-24, 24 L. 917, OMAHA HOTEL CO. v. WADE.

Syl. 3 (IX, 520). Jurisdiction—Refusal to join as complainant.

Approved in Wood v. Deskins, 141 Fed. 507, where there was no controversy between one joint vendor and purchaser but there was between others and purchaser, first vendor refusing to join in specific performance cannot be aligned as complainant to defeat federal jurisdiction.

Syl. 4 (IX, 521). Corporation's mortgage to directors.

Approved in Kessler v. Ensley Co., 129 Fed. 402, transaction by which officers have obtained property of corporation by actual fraud may be ratified by directors and disinterested majority of stockholders acting fairly with knowledge of facts; Home Fire Ins. Co. v. Barber, 67 Neb. 667, 108 Am. St. Rep. 735, 93 N. W. 1032, arguendo.

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97 U. S. 25-34, 24 L. 989, BOSTON BEER CO. v. MASSACHUSETTS.

Syl. 3 (IX, 522). Authorization to make liquor—Restricting sale.

Approved in In re Sarlo, 76 Ark. 338, 88 S. W. 954, county court authorized to issue liquor licenses may adopt condition to granting of license that license on violation of law regulating liquor traffic may be revoked; State v. Hyman, 98 Md. 616, 617, 57 Atl. 9, 10, 64 L. R. A. 637, upholding act of 1902, regulating sweating system.

Syl. 4 (IX, 523). Police power not contractable away.

Approved in Manigault v. Springs, 199 U. S. 481, 50 L. 279, 26 Sup. Ct. 127, obligation of agreement to remove dam from navigable river and allow stream to remain unobstructed not impaired by subsequent statute authorizing dam to drain lowlands; Fort Smith v. Hunt, 72 Ark. 564, 102 Am. St. Rep. 51, 82 S. W. 166, 66 L. R. A. 238, contract between city and electric company prescribing terms for erection of poles in streets does not prevent subsequent ordinance prescribing license for poles; Bland v. People, 32 Colo. 329, 76 Pac. 362, upholding act of 1899, prohibiting use of undocked horses; Chicago v. Gunning System, 214 Ill. 637, 70 Am. St. Rep. 230, 73 N. E. 1039, holding city billboard ordinance void for unreasonableness; State v. Robb, 100 Me. 185, 60 Atl. 876, upholding ordinance granting exclusive garbage collection privilege to person specially appointed, and prohibiting all others from engaging in that business; Wallace v. Mayor etc., 27 Nev. 81, 73 Pac. 530, 63 L. R. A. 337, upholding provisions of Reno act of incorporation empowering city board to revoke business licenses, and holding board may, thereunder, revoke liquor license without notice; Norfolk etc. R. R. Co. v. Commonwealth, 103 Va. 293, 49 S. E. 40, holding corporation commission could regulate rates charged by transportation company which conducted spur tracks for putting cars on scales; Petersburg v. Petersburg Aqueduct Co., 102 Va. 659, 47 S. E. 849, where water company organized when city was sparcely settled never attempted to extend system beyond limits then established, city could prohibit it from tearing up streets in extending limits.

Syl. 5 (IX, 524). Scope of police power.

Approved in New York v. Van De Carr, 199 U. S. 558, 50 L. 309, 26 Sup. Ct. 144, upholding ordinance conferring discretionary power on health board to grant or withhold permits to sell milk in city; Jacobson v. Massachusetts, 197 U. S. 25, 49 L. 649, 25 Sup. Ct. 358, upholding Massachusetts compulsory vaccination act. See 103 Am. St. Rep. 868, note.

Syl. 6 (IX, 526). Prohibiting sale of liquor.

Approved in Meyer v. Mobile, 147 Fed. 845, upholding city ordinance imposing license on dealers in beer as applied to bottled beer brought from other states; Jordan v. Evansville, 163 Ind. 517, 72 N. E. 546, 67 L. R. A. 613, upholding act giving city power to require license to sell liquor within four miles of city limits; State v. Durein, 70 Kan. 30, 80 Pac. 992, upholding anti-liquor law of 1881; State v. Frederickson, 101

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Me. 46, 63 Atl. 639, upholding Rev. St., c. 29, § 40, declaring certain liquors, including cider, when kept for sale to be intoxicating; In re O'Brien, 29 Mont. 545, 75 Pac. 200, upholding local option law; Harrell v. Speed, 113 Tenn. 230, 106 Am. St. Rep. 814, 81 S. W. 841, under Acts Tenn. 1903, p. 615, § 4, one running bar on vessel plying between Arkansas and Tennessee is liable to tax for running bar while vessel is at landing in Tennessee; Webster v. State, 110 Tenn. 505, 82 S. W. 182, upholding act prohibiting sale of liquor within four miles of institution of learning.

97 U. S. 34-39, 24 L. 909, NOYES v. HALL.

Syl. 1 (IX, 527). Adverse possession.

See 104 Am. St. Rep. 345, note.

97 U. S. 68-79, 24 L. 967, SHILLABER v. ROBINSON.

Syl. 1 (IX, 528). Mortgage—Conveyance to secure debt.

Approved in Hunt v. Springfield etc. Ins. Co., 196 U. S. 49, 49 L. 382, 25 Sup. Ct. 179, condition in fire policy for unconditional ownership broken where trust deed of property executed to secure payment of money.

Syl. 2 (IX, 528). Sales under power—Strict compliance.

Approved in Chace v. Morse, 189 Mass. 561, 76 N. E. 144, fact that notice of sale under power in mortgage and sale itself included land not included in mortgage does not make sale void; Moore v. Dick, 187 Mass. 211, 72 N. E. 968, where power of sale in mortgage authorized notice in "Reporter," which was daily paper at time mortgage executed, notice in "Lynn Bee," a weekly successor of "Reporter," was insufficient.

97 U. S. 80-83, 24 L. 971, GRANT v. NATIONAL BANK.

Syl. 1 (IX, 529). Bankruptcy—Security as preference—Knowledge.

Approved in Stevenson v. Milliken etc. Co., 99 Me. 326, 59 Atl. 475, following rule; Hardy v. Gray, 144 Fed. 925, 926, holding creditor who indirectly repurchased goods from insolvent debtor and sold same again at loss had reasonable cause to believe preference intended; Butler Paper Co. v. Goembel, 143 Fed. 298, holding chattel mortgage not preference where mortgagee believed bankrupt's failure to pay debts due to litigation with wife and that his property exceeded indebtedness; In re McMurtrey, 142 Fed. 856, transfer by insolvent firm of all property to certain creditors on demand and threat to sue, in full settlement of claims in excess of value, is preference; Off v. Hakes, 142 Fed. 365, where at time of alleged preference defendant's agent informed that in case of sale of goods at estimated value bankrupt's ability to pay creditors in full depended on ability to collect outstanding accounts, defendant not charged with knowledge of intention to prefer; In re Moody, 134 Fed. 633, where insolvent merchant transferred stock to firm in exchange for farm, title to which taken in wife's name, and purchasers paid his debt to bank, of which they were stockholders and

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officers, transfer was void under Bankr. Act, § 67e; Turner v. Fisher, 133 Fed. 595, holding creditor to whom debtor, while insolvent, and within four months of bankruptcy, assigned note and mortgage, had no reasonable cause to believe debtor insolvent; In re Goodhile, 130 Fed. 475, under Bankr. Act, § 1, cl. 15, fact that debt of retailer to wholesaler is past due when payment made does not render payment preference; Capital Nat. Bank v. Wilkerson, 36 Ind. App. 473, 75 N. E. 839, where, at time preferential payment made, debts amounted to ten times more than assets, bankrupt was insolvent; Bardes v. Bank of Hawarden, 122 Iowa, 448, 98 N. W. 285, holding grantee had sufficient knowledge to put him on inquiry so as to cause belief preference intended; Harmon v. Walker, 131 Mich. 542, 543, 91 N. W. 1026, whether attorney of bankrupt bank, in receiving payment for services on day prior to bank's suspension, and after it had failed to meet checks, to his knowledge, had reasonable cause to believe debtor insolvent, is for jury; Edwards v. Carondelet Milling Co., 108 Mo. App. 290, 291, 83 S. W. 769, holding neither defendant nor his agent had reasonable cause to believe debtor insolvent when payment made within four months of bankruptcy; Empire State Trust Co. v. Fisher Co., 67 N. J. Eq. 99, 57 Atl. 507, where company indebted in less than third of its capital, capable of earning fair interest, gave debtor mortgage to secure him, and within one month was adjudged bankrupt and trustees could not realize amount of debts, company not insolvent at time of mortgage; Wright v. Cotten, 140 N. C. 6, 52 S. E. 142, where bankrupt acted as agent for his father and paid debt to father, latter charged with knowledge that son insolvent at time payment made; Johnston v. Witt Shoe Co., 103 Va. 622, 50 S. E. 157, determining insufficiency of notice to creditor of debtor's insolvency and intent to prefer under Bankr. Act, § 60, par. a and b; Suffel v. McCartney Nat. Bank, 127 Wis. 213, 106 N. W. 839, preferential payment by one subsequently becoming bankrupt cannot be recovered by trustee merely because creditor knew facts which would cause reasonable men to doubt debtor's solvency; In re Pettingill, 137 Fed. 843, 844, 70 C. C. A. 338, arguendo.

Distinguished in In re Pettingill, 135 Fed. 220, where year prior to bankruptcy debtor paid part of debt and obtained extension on remainder, and at time agreed only part of balance paid and creditor received favorable report from commercial agency, creditor had no reasonable cause to believe debtor insolvent.

97 U. S. 83-92, 24 L. 933, COUNTY OF BATES v. WINTERS.

(IX, 529.) Miscellaneous. Cited in Red River Furnace Co. v. Tennessee etc. R. R. Co., 113 Tenn. 716, 87 S. W. 1020, where railroad asked city to subscribe for stock subscription on condition that road be completed within two years of subscription, and after favorable vote council directed mayor to subscribe, subscription not complete till actually made.

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97 U. S. 96-110, 24 L. 977, COUNTY OF WARREN v. MARCY.

Syl. 2 (IX, 531). Rule of lis pendens.

Approved in Powell v. National Bank of Commerce, 19 Colo. App. 65, 68, 74 Pac. 538, 539, 540, where one had actual notice of pendency of action for appointment of receiver, he could not take mortgage of all assets of corporation to secure past due debt.

97 U. S. 110-120, 24 L. 973, LAFLIN & RAND POWDER CO. v. BURKHARDT.

Syl. 1 (IX, 532). Bailment and sale distinguished.

Approved in In re Columbus Buggy Co., 143 Fed. 861, contract between furnisher of goods and receiver that latter may sell same at any price and pay for them at agreed price and hold unsold goods to order of furnisher, is bailment; John Deere Plow Co. v. M'David, 137 Fed. 811, 70 C. C. A. 422, contract to consign goods to one who agreed to pay freight, licenses and rents, and keep goods insured and to sell goods for enough to cover schedule price and expenses and commissions, is one of agency; Chisholm v. Eagle Ore etc. Co., 144 Fed. 671, construing contract for reduction of ore as sale and not bailment.

Syl. 2 (IX, 533). Sales—"To advance" defined.

Approved in Arbaugh v. Shockney, 34 Ind. App. 275, 72 N. E. 669, where contract to employ insurance solicitor provided for weekly advances to be deducted from agent's commissions, employer could not, on failure of venture, recover advances from agent.

Syl. 3 (IX, 533). Sale—Articles to be manufactured.

Approved in Bush v. Export Storage Co., 136 Fed. 939, where contract for building cars gave purchaser option to furnish certain parts, which builder was to accept and pay for at certain prices, and builder deducted such prices from contract price of cars, parts were sold; Scott v. Shultz, 67 Kan. 607, 73 Pac. 904, where mining property leased for term under agreement that personalty should be returned in kind or value according to invoice, at lessor's option, there was sale of personalty.

97 U. S. 120-126, 24 L. 935, UNION PAPER BAG MACHINE CO. v. MURPHY.

Syl. 1 (IX, 533). Patents—Devices doing same work.

Approved in Avery v. Case Plow Wks., 148 Fed. 220, holding Avery patent No. 650,771, for double mold-board plow, infringed; Edison etc. Elec. Co. v. Crouse etc. Elec. Co., 146 Fed. 547, holding Metzger patent No. 489,682, for electric lamp socket, valid and infringed as to claims 5 and 7, and void as to claim 6; Universal Brush Co. v. Sonn, 146 Fed. 532, 533, Morrison patent No. 717,014, for method of making brushes, infringed by method of Sonn patent No. 791,510; Los Angeles Art Organ Co. v. Aeolian Co., 143 Fed. 887, Tremaine & Pain patent No. 552,796, for improvements in mechanical musical instrument, infringed by device of Fleming patent No. 659,442; Columbia Wire Co. v. Kokomo

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etc. Wire Co., 143 Fed. 122, Bates patent No. 365,723, for wire-barbing machine, infringed by device of Fredrich patent No. 711,303; Western Elec. Co. v. Rochester Tel. Co., 142 Fed. 772, holding Scribner patent No. 330,061, for multiple telephone switch-board, valid and infringed; International Time Rec. Co. v. Dey, 142 Fed. 745, holding Cooper patent No. 528,223, for workman's time recorder, infringed; Ferry-Hallock Co. v. Hallock, 142 Fed. 176, holding Ferry patent No. 523,833, for machine for making pasteboard strips for hat-packing rings, infringed; Brown Bag Filling Mach. Co. v. Drohen, 140 Fed. 100, holding Cummings patent No. 573,171, for paper-bag filling machine, valid as for primary invention; Regina Co. v. New Century etc. Co., 138 Fed. 908, holding Brachhausen & Reissner patent No. 500,371, for music-box, void in view of prior act; International Mfg. Co. v. Brammer Mfg. Co., 138 Fed. 400, Plagman patent No. 608,220, for mechanical movement for use in washing-machines, infringed by device of Martin patent No. 736,285; National Auto. Mach. Co. v. Daab, 136 Fed. 893, holding Fairbanks patent No. 387,285, for improvement in indicators for weighing apparatus, infringed by device of Magee patent No. 733,059; Eck v. Kutz, 132 Fed. 766, holding Eck patent No. 592,134, for knitting-machine, infringed; Benbow etc. Mfg. Co. v. Simpson Mfg. Co., 132 Fed. 616, 617, holding Schroeder patent No. 535,465, for means for operating washing-machines, infringed; Calculagraph Co. v. Wilson, 132 Fed. 29, holding Hamilton patent No. 424,291, for apparatus for recording measurements of time, space or quantity, and Abbott patent No. 583,320, for calculagraph, infringed; Letson v. Alaska Packers' Assn., 130 Fed. 143, 64 C. C. A. 463, Jensen patent No. 376,804, for can-capping machine, infringed by machine of Letson and Burpee patent; Lourie Imp. Co. v. Lenhart, 130 Fed. 129, 64 C. C. A. 456, holding Lenhart patent No. 415,542, for attachment for breaking plows, infringed.

97 U. S. 126-144, 24 L. 1000, ELIZABETH v. AMERICAN NICHOLSON PAVEMENT CO.

Syl. 1 (IX, 534). Foreign patent as defense.

Approved in Queen v. Friedlander, 149 Fed. 775, holding valid Sayer patent No. 594,036, for improvement in vacuum tubes.

Syl. 5 (IX, 535). Patents—Experimental use.

Approved in American Caramel Co. v. Thomas Mills & Bro., 149 Fed. 747, fact that candy-cutting machine used experimentally for over two years and its product sold, is not public use; Victor Talking Mach. Co. v. American Graph. Co., 140 Fed. 864, 865, exhibition of talking-machine by inventor to audience accompanied by explanation of invention is not public use; Bryce Bros. Co. v. Seneca Glass Co., 140 Fed. 171, 172, holding Schrader patent No. 592,920, for engraving machine for etching glass, not invalid for prior public use; Eastman v. Mayor etc. of N. Y., 134 Fed. 857, 69 C. C. A. 628, holding Knibbs patent No. 42,920, for improvement in fire-engine pumps, void for prior public use where inventor put device on engine of which he was engineer, and on explaining use to makers of engine they put it on engine which they sold.

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Distinguished in Jenner v. Bowen, 139 Fed. 561, 562, where inventor of bottle-wrapping machine set up one for customer, who used it and sold its product as intended, use for over two years deprived inventor of right to patent.

Syl. 10 (IX, 537). Patents—Profits as damages.

Approved in Corbin v. Taussig, 137 Fed. 153, where one has exclusive agency for sale of certain goods in certain territory, one invading such territory is liable in equity only for benefits derived from sales made therein; Glucose Sugar etc. Co. v. St. Louis Syrup etc. Co., 135 Fed. 541, president of corporation not properly joined with corporation in suit for injunction and accounting for infringement of patent by corporation.

Syl. 11 (IX, 537). Patents—Mere change in form.

Approved in Edison etc. Elec. Co. v. Crouse etc. Elec. Co., 146 Fed. 547, Metzger patent No. 489,682, for electric lamp socket, claims 5 and 7, valid and infringed and claim 6 void; Columbia Wire Co. v. Kokomo Steel etc. Co., 143 Fed. 122, Bates patent No. 365,723, for wire-barbing machine, infringed by device of Fredrich patent No. 711,303.

97 U. S. 146-163, 24 L. 895, WALLACE v. LOOMIS.

Syl. 1 (IX, 538). Changing name of corporation—Special statutes.

Approved in Longview v. Crawfordsville, 164 Ind. 120, 73 N. E. 79, 68 L. R. A. 622, upholding Acts 1903, p. 201, providing for extension of boundaries of cities not having special charter and for annexation of territory by such cities.

Syl. 6 (IX, 539). Equity—Receiver's certificates.

Approved in In re Erie Lumber Co., 150 Fed. 827, under Bankr. Act, § 2 (5), bankruptcy court may authorize issuance of receiver's certificates to provide funds for operating expenses; Cunningham v. Zinc etc. Min. Co., 103 Mo. App. 400, 76 S. W. 488, under Rev. St. 1899, § 3167, laborers performing work for corporation within six months prior to trusteeship have preferred claim over all other claims except mortgages; dissenting opinion in Gregg v. Metropolitan Trust Co., 197 U. S. 192, 193, 49 L. 721, 25 Sup. Ct. 415, majority holding claim for ties necessary to preservation of railroad furnished within six months of appointment of receiver is not entitled to preference over prior mortgage.

97 U. S. 181-188, 24 L. 926, LAMBORN v. COUNTY COMMISSIONERS.

Syl. 2 (IX, 542). Recovery of taxes paid on mistake.

Approved in Utermehle v. Norment, 197 U. S. 56, 49 L. 662, 25 Sup. Ct. 291, ignorance of law that party taking benefit of provision of will in his favor is estopped to assert invalidity of will, though coupled with ignorance of evidence upon which to base contract, does not prevent application of rule; Knudsen etc. Fruit Co. v. Chicago etc. Ry. Co.,

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149 Fed. 974, where consignee after shipment delivered and with full knowledge of facts paid carrier's charges, including charge for icing in transit, he cannot recover amount of icing charge on ground of its illegality; Kahn v. Herold, 147 Fed. 579, where at time executors paid revenue inheritance tax on life estate under protest they did not know of life tenant's death, payment could be recovered; Morris v. New Haven, 78 Conn. 675, 63 Atl. 124, where at time taxes paid collector not authorized to collect plaintiff's taxes on tax list in question and appeal from assessment stayed proceedings, payment under protest was voluntary; Phoebus v. Manhattan Club, 105 Va. 148, 52 S. E. 840, mere declaration of taxpayer indorsed on stub of official tax book that payment was under protest does not show payment involuntary, in absence of proof of pressure on taxpayer.

97 U. S. 237-272, 24 L. 901, LILIENTHAL'S TOBACCO v. UNITED STATES.

Syl. 5 (IX, 545). Prima facie evidence defined.

Approved in Tift v. Southern Ry. Co., 138 Fed. 759, act to regulate commerce creates presumption in favor of commissioner's report which on its introduction changes burden of proof.

97 U. S. 284-293, 24 L. 937, UNITED STATES v. MEMPHIS.

Syl. 2 (IX, 547). Annexation to city—Liability for debts.

Approved in Toney v. Macon, 119 Ga. 87, 46 S. E. 82, Act of 1903, extending limits of Macon, not void because penalty for not making sewer connections in new territory different from that under existing ordinances in old limits.

97 U. S. 304-309, 24 L. 594, TRUST CO. v. SEDGWICK.

Syl. 2 (IX, 549). Fraudulent conveyance to wife—Decree in personam.

Approved in Sheldon v. Parker, 66 Neb. 627, 92 N. W. 929, where property conveyed to wife in fraud of husband's creditors, pursuit of property cannot be abandoned and judgment in personam for its value taken against wife.

Distinguished in Sheldon v. Parker, 66 Neb. 635, 95 N. W. 1015, where husband and wife confederate to defraud creditors by transferring husband's property to wife and property is sold to bona fide purchaser, personal judgment against wife for proceeds of sale may be entered.

97 U. S. 309-317, 24 L. 890, THE VIRGINIA EHRMAN v. THE AGNESE.

Syl. 1 (IX, 549). Collision—Duty of vessel in motion.

Approved in The Degama, 150 Fed. 324, following rule; Ross v. Cornell Steamboat Co., 143 Fed. 169, holding tug coming down river with heavy tow at night in fault for collision with dredge anchored at side of channel where she had been at work, tug knowing of its position.

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Syl. 2 (IX, 549). Collision—Fault of tug and tow.

Approved in In re Walsh, 136 Fed. 559, 69 C. C. A. 267, tug employed to furnish motive power to vessel to whose side she is lashed, and which is subject to orders of pilot on tow, is not liable for collision occurring without her fault.

97 U. S. 319-323, 24 L. 958, HERBERT v. BUTLER.

Syl. 2 (IX, 550). Direction of verdict.

Approved in Parks v. Southern Ry. Co., 143 Fed. 277, upholding direction of verdict for defendant sent to flag train was killed by it and evidence showed he had laid down beside track; Busby v. Anderson etc. Power Co., 136 Fed. 158, 69 C. C. A. 154, upholding direction of verdict for defendant in action for injuries by servant caused by failure to furnish appliances where evidence showed servant employed by independent contractor; Chicago etc. Ry. Co. v. Andrews, 130 Fed. 74, 64 C. C. A. 399, holding plaintiff injured at railroad crossing guilty of negligence; Chaddick v. Lindsay, 5 Okl. 627, 49 Pac. 944, holding railroad not liable for injury to employee caused by engine striking trunk along right of way; Gunn v. Union R. R. Co., 27 R. I. 326, 327, 62 Atl. 120, 121, upholding Gen. Laws 1896, c. 251, § 11, authorizing supreme court to direct judgment without further trial by jury.

97 U. S. 331-339, 24 L. 959, MUTUAL LIFE INS. CO. v. HARRIS.

Syl. 2 (IX, 552). Conclusiveness of sister state judgment.

Approved in Boatmen's Bank v. Fritzlen, 135 Fed. 667, 68 C. C. A. 288, where suits pending between same parties on same issues, in two courts of concurrent jurisdiction, final judgment, though rendered in second suit, is res adjudicata in other court; Barber Asphalt Pav. Co. v. Morris, 132 Fed. 951, 67 L. R. A. 761, 66 C. C. A. 55, where appeal from allowance of claims by Duluth council taken by city to state court as provided by charter, and claimant sued on claim in federal court, which stayed proceedings pending state appeals, mandamus granted to vacate stay.

Distinguished in Robinson v. American Car etc. Co., 142 Fed. 172, decree of dismissal without prejudice works no estoppel.

97 U. S. 345-348, 24 L. 940, MARTIN v. MARKS.

Syl. 2 (IX, 553). Land Department—Swamp land selections.

Approved in Kerns v. Lee, 142 Fed. 992, under swamp land act of 1850, state did not take interest in particular tract thereunder until same identified by list approved by Secretary of Interior.

97 U. S. 361-365, 24 L. 1044, STEWART v. SALAMON.

Syl. 1 (IX, 554). Appeal from decree according to mandate.

Approved in Menager v. Farrell, 6 Ariz. 319, 57 Pac. 608; Snyder v. Pima Co., 6 Ariz. 46, 53 Pac. 7, Taylor v. Colorado Iron Works, 33 Colo. 185, 80 Pac. 130, and McClung v. Harris, 11 Okl. 65, 65 Pac. 942, all following rule; American etc. Co. v. Sample, 136 Fed. 858, where

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appellate court has adjudged patent invalid and directed entry of decree in conformity with opinion, circuit court cannot grant rehearing on ground that complainant has filed disclaimer which avoids grounds of invalidity found by appellate court.

Syl. 2 (IX, 355). Correcting error in effecting appellate mandate.

Approved in McCourt v. Singers-Bigger, 150 Fed. 104, following rule.

97 U. S. 374-378, 24 L. 1060, COMMRS. v. BANK OF COMMERCE.

Syl. 1 (IX, 556). Time to object to description of defendants.

Approved in Union Pac. etc. R. R. Co. v. Saline County, 69 Kan. 284, 76 Pac. 867, 67 L. R. A. 61, where suit involving interests of county brought against persons designated as county commissioners instead of suing them as board of county commissioners, and no objection made to misnomer, county bound by judgment.

97 U. S. 379, 380, 24 L. 1012, WORK v. LEATHERS.

Syl. 1 (IX, 557). Charter of vessel—Warranty of seaworthiness.

Approved in The Oregon, 133 Fed. 617, 68 C. C. A. 603, whether vessel was seaworthy at beginning of voyage is immaterial in suit by passenger for injuries received; Smith v. Heinlein, 132 Fed. 1002, holding cargo of mahogany logs tendered for loading under charter not of such unusual size as to warrant master's refusal to take only smaller logs, and vessel liable through refusal due to vessel's unsuitableness for charter service or to want of proper tackle.

Distinguished in Swenson v. Snare & Triest Co., 145 Fed. 729, holding capsizing of pile-driver while being towed not due to unseaworthiness but to improper towing in turning it too suddenly.

Syl. 3 (IX, 557). Presumption on development of defect in ship.

Approved in The Presque Isle, 140 Fed. 205, vessel owner who receives goods in good condition as evidenced by bill of lading and delivers them damaged has burden of showing damage arose from excepted risk.

97 U. S. 381-385, 24 L. 1104, BURGESS v. SALMON.

Syl. 2 (IX, 558). Statutes—Time of taking effect.

Distinguished in Gibson v. Anderson, 131 Fed. 42, 65 C. C. A. 277, where published record of congressional joint resolutions show resolutions approved May 27, 1902, it cannot be impeached by proof of approval on later date.

97 U. S. 392-397, 24 L. 1065, ERWIN v. UNITED STATES.

Syl. 1 (IX, 559). Bankruptcy—Claim against government.

Approved in In re Burnstine, 131 Fed. 831, where bankrupt had orally transferred to wife claim against railroad for killing of son

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in consideration of her paying funeral expenses, trustee only entitled to assignment of claim in payment of funeral expenses expended.

Syl. 2 (IX, 559). Assignment of demands against government.

Approved in Nutt v. Knut, 200 U. S. 20, 50 L. 352, 26 Sup. Ct. 216, illegality of clause in contract for prosecution of claim against government, making payment for services thereunder lien on claim, does not invalidate part of contract providing for payment for services of percentage of amount allowed.

97 U. S. 398-403, 24 L. 1106, KIHLBURG v. UNITED STATES.

Syl. 1 (IX, 560). Transportation contract—Estimate of distances.

Approved in Bush v. Jones, 144 Fed. 945, applying rule where building contract provided for payments on architect's certificates; Moore v. Cornwall, 144 Fed. 30, where charter provided captain to furnish certificate of seaworthiness from charterer's marine surveyor, latter could not refuse certificate because of vessel's age without actual survey; Roberts etc. Co. v. Westinghouse etc. Mfg. Co., 143 Fed. 224, where contract for purchase of machinery provided for reference of disputes to engineer, reserving final decision to arbitrators, decision of engineer on claim for delay, without appeal, is binding; Guild v. Andrews, 137 Fed. 371, 70 C. C. A. 49, holding engineer's acceptance of sewer construction based on such gross mistakes as to imply bad faith; Adams v. O'Connor, 6 Ariz. 410, 59 Pac. 108, construing building contract; Lamson v. Marshall, 133 Mich. 266, 95 N. W. 83, applying rule where sewer contract provided for higher price for rock excavation than for earth, payments to be made on engineer's estimates; Merchants' Nat. Bank v. East Grand Forks, 94 Minn. 252, 102 N. W. 705, applying rule to city paving contract; Livesley v. Johnston, 45 Or. 46, 106 Am. St. Rep. 647, 76 Pac. 949, 65 L. R. A. 783, upholding contract for sale of quantity of hops to be grown of certain quality, buyer to have privilege of taking them at reduced rate if in his judgment they be of less quality; Plumbing Co. v. Carr, 54 W. Va. 279, 46 S. E. 461, where plumbing contract provides for final payment when work completed to satisfaction of owner and architect, reasons for rejection cannot be ignored.

Distinguished in The Nimrod, 141 Fed. 216, where contract to make boiler for tug provided that it should be satisfactory to engineer, fact that boiler was received by him and put in tug does constitute acceptance if defects not obvious.

97 U. S. 413-423, 24 L. 1013, UNITED STATES v. MORA.

Syl. 3 (IX, 562). Conditions in bond—One good.

Approved in Probate Court of Central Falls v. Adams, 27 R. I. 100, 60 Atl. 770, bond of executor who is residuary legatee conditioned to pay debts and legacies is not invalidated by addition of clause requiring executor to account.

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97 U. S. 423-426, 24 L. 1067, KENDIG v. DEAN.

Syl. 3 (IX, 563). Necessary parties defined.

Distinguished in Lucas v. Milliken, 139 Fed. 823, where bill for specific performance of contract for sale of shares of stock in corporation does not allege insolvency of other party to contract or that he is about to dispose of stock, corporation is not necessary party.

97 U. S. 426-438, 24 L. 1067, MIMMACK v. UNITED STATES.

Syl. 3 (IX, 563). Revocation of acceptance of officer's resignation.

Approved in State v. Grace, 113 Tenn. 17, 82 S. W. 487, applying rule where councilman's resignation accepted and was subsequently withdrawn with council's permission.

97 U. S. 444-450, 24 L. 1110, SETTLEMIER v. SULLIVAN.

Syl. 2 (IX, 564). Strict construction substituted service acts.

Approved in King v. Davis, 137 Fed. 206, under Va. Code 1904, p. 1684, authorizing service by posting on "front door," return showing posting and leaving on "door" of defendant's dwelling is insufficient.

Syl. 3 (IX, 565). Scope of presumption as to jurisdiction.

Approved in Johnson v. Hunter, 147 Fed. 138, 139, applying rule under Kan. Laws 1895, p. 88, relating to enforcement of levee taxes; King v. Davis, 137 Fed. 208, under Va. Code 1904, p. 1684, authorizing service by leaving copy at defendant's home and giving notice of purport to wife or any person member of family, return showing leaving of copy with wife, but not showing she is member of family, is insufficient; Alaska Commercial Co. v. Debney, 2 Alaska, 319, where defendant, prior to leaving territory, gave brother power to transact all business relating to his interests and at time of service brother was not doing any business for defendant, service on agent was insufficient.

Syl. 4 (IX, 565). Record making jurisdictional averment.

Approved in Nevada County v. Williams, 72 Ark. 397, 81 S. W. 385, where sheriff's return as to notice of order calling in county warrants does not show order posted at courthouse door as required by statute, finding that proper return made and proofs filed of service of notice is void; Clay v. Bilby, 72 Ark. 107, 78 S. W. 751, in proceedings under overdue tax act, affidavit of publication of warning order held sufficient on collateral attack, though containing irregularities.

Distinguished in dissenting opinion in Clay v. Bilby, 72 Ark. 116, 78 S. W. 754, majority holding, in proceedings under overdue tax act, affidavit of publication of warning order held sufficient on collateral attack, though containing irregularities.

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97 U. S. 450-454, 24 L. 1051, HILL v. NATIONAL BANK.

Syl. 3 (IX, 566). Machinery as fixture.

Approved in Pflueger v. Lewis etc. Machine Co., 134 Fed. 31, 67 C. C. A. 102, where bankrupt purchased heavy machinery for steel mill which was erected on brick base, to which it was fastened, but no part connected with walls of building, machinery was fixture within mechanic's lien law; White v. Cincinnati etc. R. R. Co., 34 Ind. App. 293, 71 N. E. 278, in proceeding to condemn for right of way land on which factory is situated, machinery necessary to carry on business is part of freehold regardless of manner of attachment.

97 U. S. 454-483, 24 L. 1071, KEITH v. CLARK.

Syl. 4 (IX, 567). Receipt of bank notes for taxes.

See 101 Am. St. Rep. 162, note.

97 U. S. 484-490, 24 L. 1032, SPOFFORD v. KIRK.

Syl. 2 (IX, 568). Assignment of claim against government.

Approved in Nutt v. Knut, 200 U. S. 20, 50 L. 352, 26 Sup. Ct. 216, illegality of clause in contract for prosecution of claim against government, making payment for services thereunder lien on claim, does not invalidate part of contract providing for payment for services of percentage of amount alleged; Henningsen v. United States etc. Guaranty Co., 143 Fed. 813, assignment by public contractor of claim against government for money accruing on building contract is void as against government, surety, and laborers and materialmen.

97 U. S. 491-501, 24 L. 1095, MISSOURI ETC. RY. v. KANSAS PACIFIC RY.

Syl. 1 (IX, 569). Land grants in praesenti.

Approved in Okanogan Co. v. Cheetham, 37 Wash. 687, 80 Pac. 263, 70 L. R. A. 1027, under U. S. Rev. St., § 2477, and Laws 1903, p. 155, § 103, where public used highway over public lands for seven years prior to homestead entry, user was acceptance of congressional grant without resolution of acceptance of highway.

Syl. 5 (IX, 570). Land grant on condition—Relation back.

Approved in Kneeland v. Korter, 40 Wash. 367, 82 Pac. 610, 1 L. R. A. (N. S.) 745, where tide lands within place limits of railroad grant surveyed and railroad performed all conditions prior to admission of state, railroad entitled to land, though patent issued after constitution.

Syl. 7 (IX, 571). Railroad land grant.

Approved in Sjoli v. Dreschel, 199 U. S. 566, 50 L. 312, 26 Sup. Ct. 154, no interest in lands within indemnity limits of Northern Pacific grant acquired by that company by virtue of filing lists of selection to supply deficiencies within place limits.

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97 U. S. 501-509, 24 L. 1115, PATTERSON v. KENTUCKY.

Syl. 2 (IX, 572). Extent of police power.

Approved in Chicago etc. Ry. Co. v. Illinois, 200 U. S. 584, 50 L. 606, 26 Sup. Ct. 341, upholding imposition on railroad of entire cost of removing and rebuilding bridge made necessary by proposed widening of creek channel by commissioners acting under Illinois farm drainage act; Bland v. People, 32 Colo. 329, 76 Pac. 362, upholding act of 1899, prohibiting use of unregistered docked horses; Louisville v. Wehmhoff, 116 Ky. 830, 848, 76 S. W. 881, 79 S. W. 202, upholding ordinance forbidding transmission to poolroom operator of messages intended for use in pool-selling business in city; Commonwealth v. Strauss, 191 Mass. 553, 78 N. E. 139, upholding Rev. Laws, c. 56, § 1, prohibiting anyone from making it condition of sale of goods that purchaser shall not deal in those of others; Wallace v. Mayor etc. of Reno, 27 Nev. 81, 73 Pac. 530, 63 L. R. A. 337, under Reno charter, city board may revoke liquor license without notice; dissenting opinion in Lochner v. New York, 198 U. S. 65, 69, 49 L. 945, 947, 25 Sup. Ct. 539, majority holding void New York act of 1897, limiting hours of work in bakeries; Bobbs-Merrill Co. v. Straus, 139 Fed. 170, arguendo.

Syl. 4 (IX, 573). Police regulation—Oil regulations.

Distinguished in Ozan Lumber Co. v. Union County Nat. Bank, 145 Fed. 345, 346, holding void Arkansas act of 1891, providing that negotiable instrument taken in payment for patented article must be executed on printed form showing it was so taken.

Syl. 5 (IX, 573). Patentee's rights subordinate to police power.

Approved in Woods v. Carl, 75 Ark. 340, 87 S. W. 623, upholding Kirby's Dig., §§ 513, 514, making void notes given in payment of patented articles when they do not show on face for what given; J. H. Clark Co. v. Rice, 127 Wis. 459, 106 N. W. 234, holding void Laws 1901, p. 364, as amended in 1903, providing that notes given for patents or interests therein shall state that they are so given; Kipp v. Gates, 126 Wis. 572, 105 N. W. 947, holding answer in action on notes alleging note given for price of patent and note did not so show as provided by statute, insufficient.

Distinguished in Ozan Lumber Co. v. Union Co. Nat. Bank, 145 Fed. 347, holding void Arkansas act of 1891, providing that negotiable instrument taken in payment for patented article must be executed on printed form showing it was so taken.

Syl. 6 (IX, 574). Patents—Property in machine and invention.

Approved in Hartman v. Park & Sons Co., 145 Fed. 363, upholding system of contracts whereby owner of proprietary medicine sold to wholesalers and retained control over trade as to retailers to whom and prices at which wholesalers may resell and at prices at which retailers may resell; In re Dann, 129 Fed. 496, 497, incorporeal inter-

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est of inventor in invention prior to patent does not pass to trustee in bankruptcy; dissenting opinion in Continental Paper Bag Co. v. Eastern Paper Bag Co., 150 Fed. 750, majority holding fact that machine of patent never put to commercial use does preclude owner from enjoining infringement.

(IX, 571.) Miscellaneous. Cited in Kentucky v. Powers, 139 Fed. 490, on taking case to supreme court from Kentucky, after affirmance of circuit court, by court of appeals, writ of error taken from latter court.

97 U. S. 509-540, 24 L. 1118, COLEMAN v. TENNESSEE.

Syl. 1 (IX, 575). Exclusiveness of court-martial's jurisdiction.

Approved in United States v. Lewis, 129 Fed. 826, under Rev. St., § 1342, state, in time of peace, has jurisdiction over persons in military service accused of offenses against citizens of state.

Syl. 2 (IX, 575). Court-martial—Offense in enemy's country.

Approved in Hamilton v. McClaughry, 136 Fed. 448, 449, boxer uprising in China constituted time of war within fifty-ninth article of war, providing for trial of offenses by soldiers by court-martial.

Syl. 4 (IX, 575). Conflicting jurisdictions—Court-martial.

Approved in Kepner v. United States, 195 U. S. 128, 49 L. 124, 24 Sup. Ct. 797, right of government to appeal from acquittal in Philippine court of first instance taken away by § 5 of Act of 1902 for temporary government of Philippines.

97 U. S. 541-545, 24 L. 1112, WELSH v. COOK.

Syl. 1 (IX, 576). Congressional power over territories.

Approved in Binns v. United States, 194 U. S. 492, 48 L. 1089, 24 Sup. Ct. 816, license fees imposed by Alaska Pen. Code, § 460, are local taxes imposed under plenary power of Congress over territories for purpose of defraying expenses of territory.

97 U. S. 546-553, 24 L. 1082, UNITED STATES v. CLAFLIN.

Syl. 4 (IX, 577). Statutes—Repeals by implication.

Approved in Succession of Dupre, 116 La. 1094, 41 So. 325, amendatory act of 1872 impliedly repeals Rev. St., §§ 2323-2328, relating to adoption.

Distinguished in In re Dietrick, 32 Wash. 478, 73 Pac. 508, upholding Sess. Laws 1903, p. 63, § 1, making conduct of gambling games a felony which impliedly repeals Laws 1879, p. 97, § 1, making conduct of games a misdemeanor.

Syl. 5 (IX, 578). Repeal of old by new statute.

Approved in Giles v. Dennison, 15 Okl. 63, 78 Pac. 177, Laws 1897, p. 256, § 2, relative to construction of courthouses and jails, not repealed by Laws 1903, p. 146, c. 11; McMillan v. Payne Co. Commrs.,

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14 Okl. 662, 79 Pac. 899, act of 1903, authorizing construction of bridges, not impliedly repealed by act of 1903, concerning roads and bridges; Carpenter v. Russell, 13 Okl. 283, 73 Pac. 932, Stat. 1893, c. 18, art. 13, relating to appeals, does not repeal Stat. 1890, c. 19, art. 12, § 14.

97 U. S. 554-564, 24 L. 1053, CHICAGO & N. W. RY. CO. v. SAYLES.

Syl. 1 (IX, 579). Patent monopolizes variations.

Approved in Marconi Wireless Tel. Co. v. De Forest Wireless Tel. Co., 138 Fed. 678, holding Marconi reissue No. 11,913, for wireless telegraph apparatus, claims 3 and 5, infringed by De Forest apparatus.

Syl. 2 (IX, 580). Patents—Gradual advance in art.

Approved in Hunt v. Milwaukee Hay Tool Co., 148 Fed. 225, Ferris patent No. 584,340, for hoist, not infringed by device of Gatenkunst patent No. 785,385; Mallon v. Gregg, 137 Fed. 80, 69 C. C. A. 48, holding Mallon patent No. 583,408, for automatic machine for unloading and feeding sugar-cane, valid, but not infringed by machine of Gregg patent No. 670,176.

Syl. 4 (IX, 581). Patents—Variations in amended application.

Approved in Cleveland Foundry Co. v. Detroit Vapor Stove Co., 131 Fed. 744, 748, holding void Jeawns patent No. 475,401, for oil burner.

97 U. S. 566-575, 24 L. 1015, COOK v. PENNSYLVANIA.

Syl. 1 (IX, 582). Tax on auctioneers based on sales.

Approved in Commonwealth v. Caldwell, 190 Mass. 356, 357, 76 N. E. 955, holding void Rev. Laws, c. 65, §§ 15, 16, permitting sale by peddlers without license of agricultural products of United States, but forbidding unlicensed sales of agricultural products of other countries; Mosely v. State, 115 Tenn. 57, 86 S. W. 716, interest on United States bonds not taxable by state on being paid into hands of bondholder.

97 U. S. 575-581, 24 L. 1130, HOSMER v. WALLACE.

Syl. 4 (IX, 584). Requisites of pre-emption.

Cited in Wallace v. Adams, 143 Fed. 724, arguendo.

Syl. 5 (IX, 584). No pre-emption on occupied lands.

Approved in Clipper Min. Co. v. Eli Min. etc. Co., 194 U. S. 231, 48 L. 952, 24 Sup. Ct. 632, entry on prior valid placer location for prospecting for unknown lodes initiates no title to lode claims located within boundaries of placer claims; Crawford v. Burr, 2 Alaska, 37, one acquiring peaceable possession of small tract for lot and stable on military reservation by permission of commandant, initiated no right to ground; Smith v. Love, 49 Fla. 242, 38 So. 380, holding plaintiff held land in trust for defendant.

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97 U. S. 581-584, 24 L. 1085, NEWCOMB v. WOOD.

Syl. 4 (IX, 585). Review of ruling on new trial.

Approved in Clement v. Wilson, 135 Fed. 750, 68 C. C. A. 387, following rule; Francisco v. Chicago & A. R. Co., 149 Fed. 359, where at close of trial defendant's motion for instruction in his favor granted, but before instruction given plaintiff granted leave to take involuntary nonsuit, error does not lie to review nonsuit; Peltomaa v. Katahdin etc. Paper Co., 149 Fed. 283, refusing new trial in action for personal injuries; Trafton v. United States, 147 Fed. 514, court cannot grant new trial in criminal case after term at which sentence pronounced.

97 U. S. 584-594, 24 L. 1009, GAUSSEN v. UNITED STATES.

Syl. 2 (IX, 586). Official bond—Addition of new duties.

Approved in Smith v. United States, 5 Ariz. 63, 45 Pac. 343, determining liability of sureties on bond of receiver of land district for moneys received for entries.

Syl. 3 (IX, 586). Official bonds—Addition of different duties.

Approved in Lowe v. City of Guthrie, 4 Okl. 300, 44 Pac. 202, sureties on bond of city clerk are not liable for liquor license moneys paid to clerk instead of to treasurer as required by law.

97 U. S. 624-628, 24 L. 1027, HOWLAND v. BLAKE.

Syl. 1 (IX, 587). Burden of showing intent contrary to writing.

Approved in Sing Yon v. Wong Free Lee, 16 S. D. 388, 92 N. W. 1075, holding interveners had advanced money to pay for part of interest in mining claim purchased in plaintiff's name, making them beneficiaries of resulting trust; Liskey v. Snyder, 56 W. Va. 624, 49 S. E. 521, mortgagee obtaining release of equity of redemption has burden of showing good faith and payment of fair price.

Syl. 2 (IX, 588). Sufficiency of evidence to show writing different.

Approved in Neely v. Boyd, 145 Fed. 174, holding parol agreement by purchaser of land at execution sale to hold title for benefit of judgment defendant and to permit latter to redeem at any time, not known; Houghteling v. Stockbridge, 136 Mich. 548, 99 N. W. 760, holding intent of widow that order for family allowance for one year should be substitute for annuity given by will not shown; Stitt v. Rat etc. Lumber Co., 96 Minn. 32, 104 N. W. 563, construing deed absolute as mortgage.

97 U. S. 628-642, 24 L. 1086, DAVIE v. BRIGGS.

Syl. 1 (IX, 588). Presumption of death from absence.

Approved in The San Rafael, 141 Fed. 278, where man intending to take certain boat reached ferry in time, and one answering his description seen on boat, and boat sunk and man not seen afterward,

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he is presumed dead, though only three years elapsed since accident. See 104 Am. St. Rep. 199, 203, 204, note.

97 U. S. 642-646, 24 L. 1035, STACEY v. EMERY.

Syl. 2 (IX, 589). Probable cause for seizure.

Approved in United States v. 83 Sacks of Wool, 147 Fed. 748, on judgment for claimant of property seized by customs officers for fraudulent importation, certificate of probable cause entered where officers acted in good faith.

Syl. 3 (IX, 589). Elements of malicious prosecution.

Approved in Agnew v. Haymes, 141 Fed. 638, in action against revenue officer for wrongful seizure of goods returned to claimant, probable cause is defense, though certificate thereof not granted where goods seized on order of revenue commissioner on information furnished by special agent; Moore v. Bank, 140 N. C. 303, 52 S. E. 947, applying principle in action for malicious attachment.

Distinguished in Haymes v. Brown, 132 Fed. 529, under Rev. St., § 989, probable cause not defense to action for wrongful seizure made under order of superior.

97 U. S. 646-651, 24 L. 1057, ROBERTSON v. CEASE.

Syl. 1 (IX, 589). Record showing jurisdictional facts—Citizenship.

Approved in Sun Printing etc. Assn. v. Edwards, 194 U. S. 382, 48 L. 1030, 24 Sup. Ct. 696, holding averment of residence of plaintiff in certain state aided by testimony in certificate from circuit court of appeals sufficiently shows citizenship; Utah-Nevada Co. v. De Lamar, 133 Fed. 117, 66 C. C. A. 179, objection to jurisdiction over action on assigned contract, where it does not appear assignor could sue, need not be presented by assignment of error in appellate court.

Syl. 3 (IX, 590). Citizenship—Averment of residence insufficient.

Approved in Steigleder v. McQuesten, 198 U. S. 143, 49 L. 988, 25 Sup. Ct. 616, and Yocum v. Parker, 130 Fed. 771, 66 C. C. A. 80, both following rule; Sun Printing etc. Assn. v. Edwards, 194 U. S. 382, 48 L. 1030, 24 Sup. Ct. 696, holding averment of residence of plaintiff in certain state aided by evidence contained in certificate from circuit court of appeals sufficiently shows citizenship; Kansas City etc. Ry. Co. v. Prunty, 133 Fed. 16, 66 C. C. A. 163, petition for removal is insufficient where plaintiff's citizenship not alleged, though alleged to be resident of state where action brought.

Syl. 4 (IX, 591). Federal jurisdiction must affirmatively appear.

Approved in Kolze v. Hoadley, 200 U. S. 83, 50 L. 381, 26 Sup. Ct. 220, foreclosure of trust deed cannot be maintained in federal court by assignee where assignor could not sue therein, though cancellation of release of trust deeds to grantor also prayed; Thomas v. Board of Trustees, 195 U. S. 210, 49 L. 164, 25 Sup. Ct. 24, citizenship of

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members of Ohio University trustees does not appear for jurisdictional purposes from averments showing that board, while not Ohio corporation, was created as organized body by laws of state; Minnesota v. Northern Securities Co., 194 U. S. 63, 48 L. 877, 24 Sup. Ct. 598, denying federal jurisdiction over suit by state to restrain competing interstate railways from violating anti-trust act; Dodd v. Louisville Bridge Co., 130 Fed. 193, holding removal petition by corporation formed by consolidation of corporations of different states did not show diversity of citizenship.

Syl. 5 (IX, 591). Amendment of pleadings on reversal.

Approved in Sanbo v. Union Pac. Coal Co., 140 Fed. 714, following rule.

97 U. S. 652-659, 24 L. 1063, BARNEY v. DOLPH.

Syl. 3 (IX, 591). Sale before issuance of land patent.

Approved in United States v. Detroit Timber etc. Co., 200 U. S. 336, 50 L. 505, 26 Sup. Ct. 282, purchaser from patentees for value and without notice of entryman's fraud is bona fide purchaser within timber act of 1878, though he acquired interest in lands under contract for standing timber before patent; Flanagan v. Forsythe, 6 Okl. 236, 50 Pac. 155, after final proof and issuance of final certificate, lands entered as homestead are not exempt from liability for debts.

97 U. S. 659-682, 24 L. 1036, NORTHWESTERN FERTILIZING CO. v. HYDE PARK.

Syl. 1 (IX, 592). Grants to corporations not implied.

Approved in Blair v. Chicago, 201 U. S. 472, 50 L. 831, 26 Sup. Ct. 427, construing terms of Chicago street railway franchise; Knoxville Water Co. v. Knoxville, 200 U. S. 35, 50 L. 359, 26 Sup. Ct. 224, municipal grant of waterworks franchise does not impliedly devest city of power to construct own waterworks system; Cleveland Electric Ry. Co. v. Cleveland, 137 Fed. 123, determining time of termination of franchise where company operating car lines on various streets under franchises expiring at different times accepted ordinance authorizing substitution of electric power for horses on certain line; Story v. Woolverton, 31 Mont. 355, 78 Pac. 590, act of Congress of 1891 granting to Montana one section of land of former military reservation, to be selected so as to embrace improvements thereon, did not grant right to use of water of stream from which government had taken water by means of ditch across other lands.

Syl. 4 (IX, 594). Nuisance—Prescription.

Approved in Dobbins v. Los Angeles, 195 U. S. 239, 49 L. 176, 25 Sup. Ct. 18, holding void ordinance narrowing limits for gasworks so as to include property on which works being erected in compliance with existing ordinance where change not demanded by public wel-

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fare; Glucose Refining Co. v. Chicago, 138 Fed. 217, upholding ordinance declaring emission of dense smoke a nuisance and prohibiting emission for more than three minutes.

Syl. 5 (IX, 594). Scope of police power.

Approved in State v. Tower, 185 Mo. 93, 84 S. W. 12, 68 L. R. A. 402, upholding Laws of 1901, p. 73, making emission of dense smoke in cities of certain population a nuisance; Wallace v. Mayor of Reno, 27 Nev. 81, 73 Pac. 530, 63 L. R. A. 337, under Reno incorporation act, city board may revoke liquor license without notice; Houston etc. Ry. Co. v. Dallas, 98 Tex. 415, 84 S. W. 653, upholding Dallas ordinance requiring railroads at own expense to reduce tracks at crossings to grade.

Distinguished in dissenting opinion in Ex parte Boyce, 27 Nev. 364, 75 Pac. 16, 65 L. R. A. 47, majority upholding act of 1903, providing eight-hour day for workmen in mines, smelters and ore-mills.

Syl. 6 (IX, 595). Police power—Regulation of business.

Approved in Grainger v. Douglas Park Jockey Club, 148 Fed. 521, 522, 523, 526, upholding Ky. Act of 1906, creating state racing commission, regulating running horseraces and exempting from its provisions trotting races and races conducted by fair associations.

97 U. S. 687-693, 24 L. 1098, MATTINGLY v. DISTRICT OF COLUMBIA.

Syl. 1 (IX, 596). Legislation for District of Columbia.

Approved in Binns v. United States, 194 U. S. 492, 48 L. 1089, 24 Sup. Ct. 816, license fees imposed by Alaska Pen. Code, § 460, are local taxes and not excises, and need not be uniform.

Syl. 2 (IX, 596). Front foot assessments for improvements.

Approved in Louisville etc. R. R. Co. v. Barber Asphalt Pav. Co., 197 U. S. 434, 49 L. 822, 25 Sup. Ct. 466, fact that lot abutting on street improvement used only for railway right of way does not invalidate assessment levied under area rule; McMillan v. Butte, 30 Mont. 226, 76 Pac. 204, upholding Sess. Laws 1897, p. 219, § 30, making street improvements payable by district according to area.

Syl. 3 (IX, 596). Validation of erroneous assessment.

Approved in Duniway v. Portland, 47 Or. 111, 81 Pac. 948, construing Portland Charter, § 400, authorizing reassessment for local improvements in case of invalidity of original assessment.

97 U. S. 693-697, 24 L. 1101, RUCH v. ROCK ISLAND.

Syl. 1 (IX, 596). Testimony given at former trial.

Approved in State v. Harmon, 70 Kan. 479, 78 Pac. 806, admitting substance of testimony of absent witness given at preliminary examination by one who heard testimony.

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Syl. 2 (IX, 596). Notes of testimony at former trial.

Approved in Toledo Traction Co. v. Cameron, 137 Fed. 61, 69 C. C. A. 28, in action for personal injuries, testimony of witness at former trial is admissible where witness is outside of district and over one hundred miles from place of trial.

Syl. 5 (IX, 597). Breach of condition subsequent—Reverter.

Approved in Rannels v. Rowe, 145 Fed. 301, where deed to railroad was subject to completion of road in three years or lands would revert, execution of another deed to third person by grantors of former deed is not forfeiture of first grant for breach of condition; Catron v. Laughlin, 11 N. M. 635, 72 Pac. 33, where Congress confirmed Mexican grant to such of grantees as had not forfeited rights by noncompliance with conditions, forfeiture can only be shown by proof of denouncement and official action thereon under former government.

Syl. 6 (IX, 597). Who enforces condition subsequent.

Approved in Wilmore Coal Co. v. Brown, 147 Fed. 938, where condition subsequent in deed of mineral under certain land provides that it shall be void if railroad not built in certain place in five years, and grantor gives second deed to another, who takes possession, title of first grantee vested in grantor for benefit of second grantee; Helms v. Helms, 137 N. C. 209, 49 S. E. 111, possibility of reverter under condition subsequent in deed is not assignable.

Syl. 7 (IX, 597). Breach of condition subsequent—Re-entry.

Approved in Lewiston Water etc. Co. v. Brown, 42 Wash. 558, 85 Pac. 48, under Bal. Code, § 5500, grantor in deed may recover possession for breach of condition subsequent without demand prior to suit.

97 U. S. 697-712, 24 L. 1091, MEMPHIS & C. R. R. CO. v. GAINES.

Syl. 1 (IX, 597). Taxation—Exemption of capital stock.

Approved in Powers v. Detroit etc. Ry. Co., 201 U. S. 560, 50 L. 866, 26 Sup. Ct. 556, Mich. Laws 1855, p. 305, § 9, providing railroad shall pay annual tax of percentage of capital stock in lieu of other taxes, created contract; First National Bank v. Douglas, 124 Wis. 21, 102 N. W. 317, real estate belonging to national bank, acquired with and constituting part of its capital is exempt from taxation.

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XCVIII UNITED STATES.

98 U. S. 1-19, 25 L. 60, PALMER v. LOW.

Syl. 5 (IX, 599). San Francisco pueblo lands.

Approved in Catron v. Laughlin, 11 N. M. 626, 72 Pac. 30, where New Mexico surveyor general declared Mexican grant valid and recommended its confirmation, congressional confirmation is adjudication of perfect title.

Syl. 7 (IX, 599). Confirming pueblo land titles.

Approved in Catron v. Laughlin, 11 N. M. 632, 72 Pac. 32, where New Mexico surveyor general declared Mexican grant valid and recommended its confirmation, congressional confirmation is adjudication of perfect title.

98 U. S. 20-31, 25 L. 43, GLENNY v. LANGDON.

Syl. 1 (IX, 600). Bankruptcy—Recovery of fraudulent transfer.

Approved in Mitchell v. Mitchell, 147 Fed. 286, bankruptcy trustee may sue to recover possession of property fraudulently conveyed within four months of bankruptcy, though judgment creditors could maintain creditor's bill; Northwestern etc. Ins. Co. v. Kidder, 162 Ind. 391, 70 N. E. 492, 66 L. R. A. 89, where, after insured gave check to beneficiary in payment of life policy, creditors of insolvent corporation demanded stoppage of payment on ground that insured had paid premiums with corporation's assets, insurer could not compel them to interplead as to rights to proceeds; Annis v. Butterfield, 99 Me. 187, 58 Atl. 900, purchaser of property which bankruptcy trustee sold cannot sue to set aside fraudulent transfer of such property made by bankrupt; Moore etc. Mfg. Co. v. Billings, 46 Or. 404, 80 Pac. 424, under Bankr. Act, § 70, trustee alone, to exclusion of creditors having no special lien, can maintain creditor's bill to set aside bankrupt's fraudulent transfer.

98 U. S. 31-50, 25 L. 68, BATES v. COE.

Syl. 1 (IX, 601). Presumption as to time of invention.

Approved in Los Angeles Art Organ Co. v. Aeolian Co., 143 Fed. 884, construing Tremaine & Pain patent No. 552,796, for mechanical instrument using perforated music sheets and holding it infringed by device of Fleming patent No. 659,442; Johnson v. Foos Mfg. Co., 141 Fed. 82, holding Johnson patent No. 506,268, for process and machine for separating cotton-seed and hulls from fiber, not antici-

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pated; Eck v. Kutz, 132 Fed. 764, holding Eck patent No. 523,111, for knitting-machine, not anticipated.

Syl. 6 (IX, 602). Patents—Prior public use.

Approved in Louden Mach. Co. v. Janesville etc. Tool Co., 141 Fed. 978, 979, upholding Louden patent No. 444,546, for hay sling; Spear v. Keystone Lantern Co., 131 Fed. 881, holding Spear patent No. 413,464, for improvement in lanterns, valid and not abandoned by taking out patent No. 399,944.

Syl. 8 (IX, 602). Secrecy does not forfeit invention.

Approved in Eck v. Kutz, 132 Fed. 777, holding over three years' delay in developing invention not abandonment.

98 U. S. 56-61, 25 L. 91, PETERS v. BOWMAN.

Syl. 2 (IX, 604). Vendor's lien—Adverse title.

Approved in Tinsley v. Atlantic Mines Co., 20 Colo. App. 65, 71 Pac. 13, where on foreclosure one made defendant under allegation that he held interest subsequent and subject to mortgage, disclaimed, claiming under paramount tax lien, he cannot be compelled to litigate title in such action; Townsend v. Kreigh, 133 Mich. 246, 94 N. W. 733, grantee who has given back purchase money morgtage is estopped from disputing grantor's title for purpose of defeating payment of mortgage.

(IX, 604.) Miscellaneous. Cited in Boatmen's Bank v. Fritzlen, 135 Fed. 660, 68 C. C. A. 288, holder of senior mortgage is not necessary party to foreclosure of junior mortgage.

98 U. S. 61-71, 25 L. 93, UNITED STATES v. THROCKMORTON.

Syl. 1 (IX, 604). Limitations against government.

Approved in Lynch v. United States, 13 Okl. 145, 73 Pac. 1096, where one has made homestead entry and made final proof and paid price and obtained patent, United States cannot sue to annul patent for perjury of patentee in obtaining patent. See 101 Am. St. Rep. 170, note.

Syl. 3 (IX, 605). Equity—Setting aside judgment for fraud.

Approved in Bailey v. Willeford, 136 Fed. 384, 69 C. C. A. 226, where nonresident defendant in state court appealed to state supreme court and lost, and thereafter sued to set aside judgment on ground of its procurement by fraud, and preliminary injunction refused, federal court refused to restrain collection of judgment on same ground supported by same affidavits; Le Marchel v. Teegarden, 133 Fed. 827, one attacking patent for mistake of fact must plead evidence before department from which mistake resulted, particular mistake and how it occurred; Nelson v. Meehan, 2 Alaska, 493, vacating judgment obtained by fraud and perjury; Wabash R. R. Co. v. Mirrielees, 182 Mo. 142, 81 S. W. 442, petition to set aside judgment procured by

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perjury must show diligence in preparing to meet false testimony or that party prevented from exercising diligence by fraud of successful party; Klabunde v. Byron-Reed Co., 69 Neb. 137, 98 N. W. 186, granting new trial where illiterate defendant in foreclosure suit who had equitable interest in land defrauded by plaintiff's attorney who drew his answer; Keith v. Alger, 114 Tenn. 22, 24, 25, 85 S. W. 76, 77, where vendee obtained decree setting aside sale for fraud and under decree land sold as that of vendor's estate, and heirs sued to set aside decree because vendee pending former action sold land, but concealed conveyance, petition dismissed; Farmers' etc. Warehouse Co. v. Pridemore, 55 W. Va. 463, 465, 47 S. E. 263, 264, refusing to restrain judgment where complainant alleges that he can prove matter of defense which he could not prove at trial, but does not give reason founded in fraud or mistake as cause of failure.

Syl. 4 (IX, 607). Setting judgment aside for fraud.

Approved in Estes v. Timmons, 12 Okl. 542, 73 Pac. 305, following rule; Harter v. Shull, 17 Colo. App. 167, 67 Pac. 913, in action on judgment it is no defense that judgment was procured by collusion of plaintiff with defendant's attorney; Tucker v. Stewart, 121 Iowa, 716, 97 N. W. 149, upholding equity jurisdiction of suit to set aside order discharging administrator for errors in final settlement; Graham v. Loh, 32 Ind. App. 188, 69 N. E. 476, in action to vacate judgment, mother averment that plaintiff's name forged to note on which judgment rendered nor long delay in enforcing judgment are equivalent to charge of fraud in procuring jurisdiction; Keyes v. Brackett, 187 Mass. 308, 72 N. E. 987, where owner of property charged with mechanic's lien fraudulently conveyed it and procured grantee to give bond with two irresponsible sureties to dissolve lien, lienor could cancel bond and restrain grantee from claiming rights thereunder; Fitzpatrick v. Stevens, 114 Mo. App. 502, 89 S. W. 899, where holder of note which was paid presented it to maker's estate with false affidavit that whole thereof was due, and court allowed same, administrator having no knowledge of payment could thereafter sue to set aside judgment; Thornton v. Peery, 7 Okl. 450, 54 Pac. 652, refusing to set aside entry on allegations of perjury on contest in land office; Cummings v. McDermid, 4 Okl. 277, 44 Pac. 277, allegations that defendant, through false representations and perjury, procured deed are insufficient to review award of townsite trustees; Keith v. Alger, 114 Tenn. 26, 85 S. W. 77, where vendee obtained decree setting aside sale for fraud, and under decree land sold as that of vendor's estate, petition by heirs to set aside decree because pending former action vendee sold land and concealed conveyance dismissed; dissenting opinion in Haddock v. Haddock, 201 U. S. 627, 50 L. 893, 26 Sup. Ct. 525, majority holding mere domicile within state of one spouse does not give state court's jurisdiction to grant divorce enforceable in other states against nonresident nonappearing defendant served by publication.

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Syl. 5 (IX, 608). Fraud—Land commissioner's decision.

Approved in Estes v. Timmons, 199 U. S. 396, 50 L. 244, 26 Sup. Ct. 85, perjury on hearing before Land Department on hearing of contest over homestead entry is not ground for equitable relief against decision of department; Cagle v. Dunham, 14 Okl. 615, 623, 624, 78 Pac. 562, 565, refusing to set aside Land Department decision on allegation that perjury was committed on trial before department.

Syl. 6 (IX, 609). Who sues to set aside patent.

Approved in Henry v. State, 87 Miss. 31, 38, 39 So. 862, 864, governor cannot sue in name of state.

Distinguished in dissenting opinion in Henry v. State, 87 Miss. 103, 39 So. 887, majority holding governor cannot sue in name of state.

98 U. S. 75-79, 25 L. 84, GARRATT v. SIEBERT.

Syl. 1 (IX, 609). When patent infringed.

Distinguished in Boston Pneumatic Power Co. v. Eureka Patents Co., 139 Fed. 31, under Rev. St., § 4918, court cannot declare later patent void for want of patentability.

98 U. S. 79-85, 25 L. 66, IVINSON v. HUTTON.

Syl. 1 (IX, 609). Reformation of instruments—Mistake.

Approved in Lefler v. New York Life Ins. Co., 143 Fed. 817, refusing parol evidence to contradict provision of premium note relating to gr-

98 U. S. 85-98, 25 L. 52, SNELL v. INSURANCE CO.

Syl. 1 (IX, 610). Insurance—Reforming policy.

Approved in American Cereal Co. v. Western Assur. Co., 148 Fed. 79, where policy provided that it insured A against loss on described property, loss payable to B as his interest may appear, A was insured; Phoenix Assurance Co. v. Boyette, 77 Ark. 49, 90 S. W. 286, reforming policy where parties intended policy should cover only part of cotton in warehouse and insured relied on assurance of insurance agent that this was effect of policy; Phoenix Ins. Co. v. State, 76 Ark. 182, 88 S. W. 918, reforming insurance policy for mistake as to name of insured and location of subject matter of risk; Marshall v. Hornier, 13 Okl. 275, 74 Pac. 371, upholding action by grantor to reform deed to realty where by agreement growing crops reserved and reservation left out of deed by mutual mistake.

Syl. 2 (IX, 611). Reformation of instruments—Mistake of law.

Approved in Greer Co. v. Texas, 197 U. S. 241, 49 L. 738, 25 Sup. Ct. 437, legal title to Texas lands patented to Geer county under supposition that county belonged to Texas does not pass to Geer county, Oklahoma; Utermehle v. Norment, 197 U. S. 56, 49 L. 662, 25 Sup. Ct. 291, ignorance of rule that one taking benefit of will in his favor cannot attack its validity does not prevent its application;

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Carrell v. McMurray, 136 Fed. 669, where parties entered into parol agreement for exchange of plaintiff's land for defendant's store, plaintiff to retain possession of farm and collect rent for ensuing year, and by mistake of scrivener deed and contract failed to make reservation, deed reformable.

98 U. S. 118-122, 25 L. 86, WIRTH v. BRANSON.

Syl. 1 (IX, 612). Second location when first unvacated.

Approved in Metz v. Wright, 116 Mo. App. 647, 92 S. W. 1129, absence of patent does not vitiate title where land duly entered and entryman has complied with all essentials necessary to entitle him to patent.

Syl. 2 (IX, 614). Equitable owner of lands.

Approved in Waldron v. United States, 143 Fed. 418, where Sioux woman filed selection of reservation lands, but claim rejected on ground that she was not Indian, and patent issued to later settler, former entitled to cancellation of latter's patent; Tegarden v. Le Marchel, 129 Fed. 490, state statute giving ejectment defendant right to recover for improvements does not apply where plaintiff claims under patent issued after improvements made; Blumer v. Iowa R. R. Land Co., 129 Iowa, 38, 105 N. W. 344, as against railroad entitled to public land under grant, limitations run in favor of occupant under timber culture act from time he takes possession under receiver's receipt; United States v. Detroit Timber etc. Co., 200 U. S. 339, 50 L. 506, 26 Sup. Ct. 282, arguendo.

98 U. S. 123-125, 25 L. 75, NATIONAL BANK OF ST. LOUIS v. GRAND LODGE OF MASONS.

Syl. 1 (IX, 614). Suit by beneficiary of contract.

Approved in Quigley v. Spencer Stone Co., 143 Fed. 90, where complainants contracting to furnish stone in daily installments assigned same to one defendant, who assigned his contract to codefendant, who assumed all obligations, on first defendant's insolvency, complainant could sue both defendants in equity for breach of contract; First Nat. Bank v. Fish, 2 Alaska, 347, 349, where A purchased goods and gave note therefor, and goods sold to B, who agreed with A to pay note, B liable to holder of note.

Distinguished in Hawkins v. Central Ry. Co., 119 Ga. 165, 46 S. E. 85, where one railroad sold all property to another, who agreed to pay former's current liabilities, latter not liable to suit for personal injuries inflicted prior to sale.

Syl. 4 (IX, 615). Corporation assuming another's debt.

Approved in Bort v. McCutchen, 147 Fed. 630, where depository for funds of corporation executed bond to president and corporation jointly and severally, president could not sue on bond after ceasing to be such; Hardison v. Yeaman, 115 Tenn. 654, 91 S. W. 1114, under

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bond of contractor for erection of courthouse providing that surety only liable to owner, materialman cannot sue thereon.

98 U. S. 145-169, 25 L. 244, REYNOLDS v. UNITED STATES.

Syl. 1 (IX, 618). Indictment according to territorial laws.

Approved in Cochran v. United States, 147 Fed. 207, on trial in Oklahoma court of indictment for federal offense, questions relating to severance and peremptory challenges are determined by territorial laws; Welty v. United States, 14 Okl. 15, 76 Pac. 123, in prosecution in territorial court for federal offense, defendant need not be served with list of jury before trial as provided by federal law; Ex parte Murphy, 1 Okl. 290, 29 Pac. 653, allowing bail pending appeal in criminal case on federal side of territorial court as provided by territorial statute.

Syl. 2 (IX, 619). Jury trial—Sixth amendment.

Approved in Rasmussen v. United States, 197 U. S. 526, 49 L. 865, 25 Sup. Ct. 514, holding void 31 Stat. 358, § 171, providing for jury of six in misdemeanor trials in Alaska; Queenan v. Territory, 11 Okl. 266, 71 Pac. 219, 61 L. R. A. 324, disqualification of juror in criminal case known during progress of trial is waived by failing to raise objection till after verdict.

Syl. 4 (IX, 620). Competency of jurors—Review.

Approved in Jacobson v. Massachusetts, 197 U. S. 23, 49 L. 648, 25 Sup. Ct. 358, scope and meaning of state vaccination statute as indicated by exclusion of evidence on ground of immateriality are conclusive on federal court in determining validity of statute; Jarvis v. State, 138 Ala. 36, 34 So. 1031, applying rule in murder case; Brady v. Territory, 7 Ariz. 19, 60 Pac. 700, upholding refusal of challenge for actual bias where juror had formed opinion from talking with others and from hearing part of former trial; Burns v. Dunham-Carrigan etc. Co., 148 Cal. 211, 82 Pac. 960, refusing to reverse for refusal of challenge to juror who made conflicting statements on voir dire; Graybill v. De Young, 146 Cal. 423, 80 Pac. 619, holding newspaper man not incompetent juror in libel case where he would try case on evidence and law though he thought libel actions speculative; Williams v. Supreme Court of Honor, 221 Ill. 158, 77 N. E. 543, juror forming opinion from reading papers which it would take evidence to remove, but who would be governed by law and evidence, not disqualified; Huntley v. Territory, 7 Okl. 68, 54 Pac. 316, upholding denial of challenge for bias where juror formed opinion from street rumor, but could try case fairly on law and evidence; Keffer v. State, 12 Wyo. 65, 73 Pac. 559, where in murder case only issue was as to defendant's sanity at time of killing, juror stating he had formed opinion from speaking with others, which it would take evidence to remove, not disqualified; dissenting opinion in People v. Mol, 137 Mich. 706, 100 N. W. 918, majority holding where several defendants

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charged with bribery arising out of same conspiracy, jurors who sat in trial of one conspirator were disqualified on trial of others. See 103 Am. St. Rep. 867, note.

Syl. 7 (IX, 621). Testimony taken at former trial.

Approved in West v. Louisiana, 194 U. S. 265, 48 L. 970, 24 Sup. Ct. 650, admitting testimony taken at preliminary examination on proof of nonresidence, permanent absence and inability to procure attendance of witness; United States v. Greene, 146 Fed. 801, stenographic report of testimony of witness on issue of probable cause taken before commissioner on proceeding for removal of defendant to another federal district for trial is admissible on trial where witness is dead; Persons v. Smith, 12 N. D. 417, 97 N. W. 556, admitting testimony given at former trial in federal court between same parties involving same issues, where witness dead.

Syl. 9 (IX, 621). Religious belief no defense to crime.

Approved in State v. Chenoweth, 163 Ind. 99, 71 N. E. 199, belief in Divine Healing is no defense to prosecution for involuntary manslaughter caused by failure to provide medical attendance for child; United States v. Griego, 11 N. M. 399, 72 Pac. 21, indictment for adultery under federal statute is sufficient where it charges married man with committing adultery by having "unlawful intercourse."

(IX, 618.) Miscellaneous. Cited in State v. Marble, 72 Ohio St. 32, 106 Am. St. Rep. 570, 73 N. E. 1066, 70 L. R. A. 835, upholding medical statute in so far as it regulates Christian Science; Fuller & Fuller Co. v. Johnson, 8 Okl. 605, 58 Pac. 747, United States court of Indian Territory is not United States court within Okl. St. 1890, p. 930, § 2.

98 U. S. 176-179, 25 L. 238, ORVIS v. POWELL.

Syl. 3 (IX, 624). Foreclosure decree—Time to redeem.

Approved in County of Logan v. McKinley etc. Trust Co., 70 Neb. 414, 101 N. W. 993, absolute order of confirmation of sale made pursuant to decree of sale for taxes which deprives debtor of statutory right of redemption is erroneous.

98 U. S. 179-186, 25 L. 115, McKNIGHT v. UNITED STATES.

Syl. 1 (IX, 624). Assignment of government contractor's claim.

Approved in Henningsen v. United States etc. Guaranty Co., 143 Fed. 813, assignment by public contractor of claim against United States for money under building contract is void as against government, surety and laborers and materialmen.

98 U. S. 187-202, 25 L. 116, STEWART v. SONNEBORN.

Syl. 3 (IX, 625). Malicious prosecution—Probable cause.

Approved in Moore v. Bank, 140 N. C. 309, 52 S. E. 949, holding facts did not show want of probable cause for attachment; Cooper v.

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Flemming, 114 Tenn. 52, 84 S. W. 804, instruction that whether opinion of attorney general on which prosecution based was justified by statute was to be determined by court is erroneous.

Syl. 8 (IX, 627). Malicious prosecution of bankruptcy proceedings.

Approved in Wilkinson v. Goodfellow etc. Shoe Co., 141 Fed. 219, 220, action for malicious prosecution lies for institution of bankruptcy proceedings without probable cause and with malice, though unaccompanied by seizure of property.

Syl. 9 (IX, 627). Malicious prosecution—Legal advice.

Approved in Cooper v. Flemming, 114 Tenn. 49, 84 S. W. 803, following rule; United States v. Praeger, 149 Fed. 484, refusal of civilian witness to answer questions before court-martial on advice of counsel that answers might subject him to prosecution for libel is defense to prosecution under Comp. St. 1901, p. 965; Adkin v. Pillen, 136 Mich. 686, 100 N. W. 178, where attorney who advised prosecution was directly interested in controversy and defendant informed by other attorneys that facts insufficient to sustain prosecution, advice of first attorney no defense to malicious prosecution suit.

Distinguished in Cook v. Proskey, 138 Fed. 276, proof that defendant in suit for malicious prosecution before beginning prosecution made disclosure of facts to magistrate and was advised to prosecute is no defense in absence of showing that magistrate was attorney.

98 U. S. 203-217, 25 L. 97, SNYDER v. SICKLES.

Syl. 1 (IX, 628). Appeal from general land office.

Distinguished in McDaid v. Territory, 1 Okl. 101, 30 Pac. 441, under 26 U. S. Stat. 109, relating to townsite lots, after patent issued to townsite trustees, no appeal lies to general land office or Secretary of Interior.

(IX, 628.) Miscellaneous. Cited in Territory v. Delinquent Taxpayers, 12 N. M. 65, 73 Pac. 622, titles complete under Mexican law were perfect after cession and required no confirmation.

98 U. S. 218-224, 25 L. 103, ELCOX v. HILL.

Syl. 1 (IX, 628). Innkeepers—Safe provided for valuables.

See 99 Am. St. Rep. 592, note.

98 U. S. 225-239, 25 L. 158, ANDREAE v. REDFIELD.

Syl. 3 (IX, 629). Statement of officials as estoppel.

Approved in Monroe v. Herrington, 110 Mo. App. 518, 85 S. W. 1005, where indorser informed holder of note of property of estate of one previously liable and asked him to try to collect from estate, agreeing to pay balance when estate settled, indorser not estopped from pleading limitations; Newell v. Clark, 73 N. H. 291, 61 Atl. 555, arguendo.

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Syl. 4 (IX, 629). Limitations—Concealment of cause of action.

Approved in Rankin v. Barton, 69 Kan. 632, 77 Pac. 532, if comptroller fails to make accounting and determine necessity for stockholder's assessment within reasonable time after insolvency of national bank, limitations begin to run in favor of stockholders.

98 U. S. 240-242, 25 L. 105, EX PARTE SCHWAB.

Syl. 1 (IX, 629). Mandamus not substitute for appeal.

Approved in Hanson v. Police Jury, 116 La. 1084, 41 So. 322, refusing mandamus to compel trial judge to enjoin police jury from demolishing courthouse and erecting new one.

98 U. S. 254-266, 25 L. 47, BOWEN v. CHASE.

Syl. 2 (IX, 631). Agreement that evidence did not conflict.

Approved in Phenix Ins. Co. v. Kerr, 129 Fed. 725, 64 C. C. A. 251, 66 L. R. A. 569, where at close of jury trial each party requests peremptory instruction, and court grants one request, only question reviewable is sufficiency of evidence.

98 U. S. 315-331, 25 L. 139, BLAKE v. HAWKINS.

Syl. 1 (IX, 633). Will construction—Attending circumstances.

Approved in Anderson v. Messinger, 146 Fed. 938, construing estate of sons where will provided that if either of two sons died without lineal descendants survivor shall take his share, and if survivor so dies, portion taken by survivorship shall go to testator's brothers and sisters.

Syl. 3 (IX, 633). Wills—Execution of power.

Approved in Walters v. Bristol, 77 Ark. 185, 91 S. W. 306, where will gave life tenant power to convey, and she conveyed for one-third value, being joined by one of remaindermen, deed not pursuant to power; Lane v. Lane's Admx., 4 Penne (Del.), 377, 55 Atl. 187, 64 L. R. A. 849, will of testator domiciled in Pennsylvania disposing of all his estate is not execution of power of Delaware testator authorizing former to dispose of by will the principal, income of which given him for life, though under Pennsylvania law it would be valid execution.

98 U. S. 334-342, 25 L. 198, UNITED STATES v. BURLINGTON ETC. R. R. CO.

Syl. 4 (IX, 635). Statutes—Executive construction.

Approved in State v. Northern Pac. Ry. Co., 95 Minn. 47, 103 N. W. 732, foreign railroad paying taxes under gross earnings law, upon which no demand made for listing of credits, tax on which not commuted by that law, is not prevented by failure to list credits from deducting debts from credits.

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Syl. 6 (IX, 635). Cancellation of patents—Innocent purchasers.

Approved in United States v. Stinson, 197 U. S. 205, 49 L. 725, 25 Sup. Ct. 426, refusing to set aside patents fraudulently acquired where forty years elapsed since alleged fraud and property had passed to receiver of patentee; United States v. Detroit etc. Lumber Co., 131 Fed. 677, title of bona fide purchasers of equitable title evidenced by receiver's final receipts on which patents subsequently issue is unassailable at suit of United States to avoid patents for fraud in procurement of patents; Lynch v. United States, 13 Okl. 145, 156, 158, 73 Pac. 1096, 1100, where homesteader made entry for townsite purposes and made final proof and payments and obtained patents, United States cannot annul patent, though patentee committed bribery and perjury in obtaining title, where lots sold to bona fide purchasers.

98 U. S. 343-358, 25 L. 180, UNITED STATES v. HALL.

Syl. 1 (IX, 636). Seizure of pension money.

Approved in Manning v. Spry, 121 Iowa, 198, 199, 96 N. W. 875, pension money paid to guardian of insane pensioner and by him loaned is exempt from taxation.

98 U. S. 359-366, 25 L. 185, ATLANTIC & GULF R. R. CO. v. GEORGIA.

Syl. 1 (IX, 636). Consolidation of railroads—Reserved power.

Approved in Walsey v. Chicago etc. Ry. Co., 147 Fed. 614, where railroad which was corporation of both Illinois and Iowa united with Iowa companies to form new company, into which all property consolidated and merged, it was corporation of both states for purposes of federal jurisdiction; Rochester v. Rochester Ry. Co., 182 N. Y. 118, 74 N. E. 959, 70 L. R. A. 773, where railroad had statutory exemption from cost of new pavements, such exemption did not pass to its lessee with reference to streets in which road built prior to enactment of statute imposing on railroads cost of repaving; Gladding v. Saint Matthews Church, 25 R. I. 634, 105 Am. St. Rep. 904, 57 Atl. 863, 65 L. R. A. 225, where testator bequeathed property to deaf mute church, but before death church consolidated with another, which had department doing same work as old church, new church not entitled to bequest.

Distinguished in Lee v. Atlantic Coast Line R. Co., 150 Fed. 787, 788, construing agreement between two railroads as merger and not consolidation.

Syl. 2 (IX, 637). Consolidation of railroads—Taxation.

Approved in San Antonio Traction Co. v. Altgelt, 200 U. S. 309, 50 L. 494, 26 Sup. Ct. 261, contract exemption from rate regulation possessed by street railway chartered prior to Texas constitution of 1876, lost by acquisition on foreclosure of its property by new company.

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98 U. S. 381-398, 25 L. 225, UNITED STATES v. NEW ORLEANS.

Syl. 3 (IX, 640). City's power to borrow implies tax.

Approved in Rose v. McKie, 145 Fed. 591, granting mandamus to compel levy of tax by town to pay judgment, though authority to tax is limited, where not shown that authority exhausted; City Council etc. of Denver v. Board Co. Commrs. Adams Co., 33 Colo. 8, 77 Pac. 860, holding Denver not precluded from levying tax in excess of rate provided for by Sess. Laws 1899, p. 330, c. 133, to meet charge imposed by act of 1903, relating to adjustments between municipalities created out of Arapahoe county.

98 U. S. 398-403, 25 L. 231, BALTIMORE & P. R. R. CO. v. GRANT.

Syl. 1 (IX, 642). Statutes authorizing review—Repeal.

Distinguished in Sena v. United States, 147 Fed. 488, under New Mexico Organic Act, §§ 7, 10, where defendant, after conviction in district court, appealed in accordance with existing statute, repeal of such statute without saving clause did not deprive supreme court of jurisdiction.

Syl. 2 (IX, 642). Repeal of law giving jurisdiction.

Approved in United States v. Sena, 12 N. M. 414, 415, 78 Pac. 62, repeal of Sess. Laws 1901, p. 190, deprived supreme court of jurisdiction over criminal appeals not applied for during term of rendition of judgment; Terry v. McClung, 104 Va. 601, 52 S. E. 356, where no final order establishing road as applied made at time of passage of act of 1888, depriving county court of Highland county of jurisdiction in road cases, proceedings lapsed.

Distinguished in dissenting opinion in United States v. Sena, 12 N. M. 417, 418, 78 Pac. 63, majority holding repeal of Sess. Laws 1901, p. 190, deprived supreme court of jurisdiction over criminal appeals not applied for during term of rendition of judgment.

98 U. S. 403-410, 25 L. 206, MISSISSIPPI & RUM RIVER BOOM CO. v. PATTERSON.

Syl. 5 (IX, 644). Eminent domain—Necessity for appropriation.

Approved in Richland School Tp. v. Overmyer, 164 Ind. 386, 73 N. E. 813, denying jurisdiction to review action of trustee under Burns' St. 1901, § 6006, providing for condemnation of land by township for school purposes whenever trustee deems necessary; Lafayette etc. Ry. Co. v. Butner, 162 Ind. 462, 70 N. E. 529, no appeal lies from order of circuit court denying application for appointment of appraisers in proceeding to condemn lands for railroad right of way.

Distinguished in Chicago etc. Ry. Co. v. Williams, 148 Fed. 444, where local board attempts to exercise power of eminent domain not conferred by legislature, its action is reviewable by federal court.

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Syl. 7 (IX, 645). Eminent domain—Value, how determined.

Approved in Metropolitan St. Ry. Co. v. Walsh, 197 Mo. 419, 94 S. W. 868, following rule; City of Seattle v. Board Home Missions, 138 Fed. 311, under Laws Wash. 1893, p. 194, c. 84, § 15, relating to compensation for damages from change of grade, local or special benefits that particular property derives by reason of improvements deducted from damages it would sustain; Callaway v. Hubner, 99 Md. 535, 58 Atl. 365, refusing to ratify sale of trust property; Conan v. City of Ely, 91 Minn. 131, 97 N. W. 739, in condemning piece of land appropriated from larger tract by city to be used in extending waterworks, fact that valuable spring enhances market value of property taken was proper subject of inquiry; Richmond etc. Ry. Co. v. Seaboard etc. Ry. Co., 103 Va. 408, 49 S. E. 515, on condemnation of land for railway right of way, fact that land was available for public park and owners intended to improve it for that purpose in future and use it as source of revenue is not element of damages; In re Westlake Avenue, 40 Wash. 151, 82 Pac. 281, applying rule in estimating benefits on property by reason of opening of street; Brown v. Weaver Power Co., 140 N. C. 342, 343, 52 S. E. 957, 958, determining measure of damages where land damaged by exercise of power of eminent domain in erection of dam for generating water-power; Norfolk etc. Ry. Co. v. Davis, 58 W. Va. 623, 624, 52 S. E. 726, determining measure of damages where developed gas property taken for railway right of way; Guyandot Valley Ry. Co. v. Buskirk, 57 W. Va. 425, 430, 110 Am. St. Rep. 792, 50 S. E. 524, 526, determining market value of land condemned for railroad right of way and station.

Distinguished in Atlantic etc. R. R. Co. v. Postal Tel. Co., 120 Ga. 281, 48 S. E. 20, determining measure of damages for condemnation of railroad right of way by telegraph company.

Syl. 8 (IX, 646). Federal jurisdiction—Condemnation.

Approved in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 247, 248, 250, 49 L. 465, 466, 25 Sup. Ct. 251, affirming 130 Fed. 790, 791, holding condemnation for railroad right of way by Kentucky railroad against citizen of another state is removable; Helena Power etc. Co. v. Spratt, 146 Fed. 312, upholding federal jurisdiction over proceeding by corporation to condemn land under Montana eminent domain statute; Buckhannon etc. R. Co. v. Davis, 135 Fed. 709, 68 C. C. A. 345, where federal court in liquidation proceedings against railroad appointed receiver, order requiring suit against receiver to condemn crossing over right of way to be brought in federal court is not interference with state's right of eminent domain; Union Ry. Co. v. Standard Wheel Co., 149 Fed. 701, arguendo.

Distinguished in dissenting opinion in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 259, 260, 49 L. 470, 25 Sup. Ct. 251, majority holding condemnation for railroad right of way by Kentucky railroad against citizen of another state is removable.

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(IX, 643.) Miscellaneous. Cited in Western Union Tel. Co. v. Pennsylvania R. R. Co., 195 U. S. 583, 49 L. 328, 25 Sup. Ct. 133, right of eminent domain is incident of sovereignty and needs no constitutional recognition. See 102 Am. St. Rep. 822, note, boom as public use.

98 U. S. 425-428, 25 L. 191, FOSTER v. MORA.

Syl. 1 (IX, 649). Ejectment—Legal title prevails.

Approved in Schurmeier v. Connecticut etc. Ins. Co., 137 Fed. 47, 69 C. C. A. 22, action at law for allowance of claims against estate of decedent presented after eighteen months from order of probate court under Minnesota statute is not maintainable in federal court; Anglo-American Land etc. Co. v. Lombard, 132 Fed. 731, 68 C. C. A. 89, in law action in federal court to enforce Kansas corporation stockholder's liability, defendant cannot set off corporation's debt to him.

Distinguished in Cheatham v. Edgefield Mfg. Co., 131 Fed. 120, 121, facts constituting equitable estoppel are pleadable as defense to ejectment in federal court.

98 U. S. 428-432, 25 L. 251, UNITED STATES v. PEROT.

Syl. 2 (IX, 649). Judicial notice of foreign laws.

Approved in United States v. Berrigan, 2 Alaska, 446, under article 3 of Russian treaty ceding Alaska, native bands of Tanana are entitled to equal protection of laws with similar aboriginal tribes. See 113 Am. St. Rep. 869, note.

98 U. S. 433-439, 25 L. 209, CARR v. UNITED STATES.

Syl. 2 (IX, 650). Judgment against officers—Estoppel of government.

Approved in Sanders v. Saxton, 182 N. Y. 480, 108 Am. St. Rep. 826, 75 N. E. 530, action by land owner against commissioner of land office and state comptroller to have tax deed executed to state declared void is not maintainable, as state is necessary party and cannot be sued. See 105 Am. St. Rep. 210, note.

Syl. 3 (IX, 651). Suit against government.

Approved in Tyee Consol. etc. Min. Co. v. Langstedt, 1 Alaska, 466, ten year statute of limitation begins to run in favor of one in adverse possession of part of mining claim from time of location and not from date of patent. See 108 Am. St. Rep. 831, note.

Syl. 4 (IX, 651). Government's enforcement of equitable rights.

Approved in dissenting opinion in State v. Marsh, 134 N. C. 192, 47 S. E. 9, 67 L. R. A. 179, majority holding where conviction for rape reversed because indictment in record did not show allegation of non-consent, and it is thereafter shown that such allegation omitted from record by misprision of clerk, supreme court granted certiorari to correct record and reset case for hearing.

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98 U. S. 440-447, 25 L. 168, THE ABBOTSFORD.

Syl. 1 (IX, 651). Admiralty—Conclusiveness of finding of fact.

Approved in Streeter v. Sanitary Dist. of Chicago, 133 Fed. 126, 66 C. C. A. 190, where jury is waived, and general finding made, review is limited to rulings at trial presented in bill of exceptions; Wiser v. Lawler, 7 Ariz. 183, 62 Pac. 700, holding assignments of error on equity appeal too general to review findings.

Syl. 2 (IX, 652). Statutes—Judicial interpretation.

Approved in Kepner v. United States, 195 U. S. 124, 49 L. 122, 24 Sup. Ct. 797, right of appeal by government from acquittal in Philippine court of first instance was taken away by § 5 of Act of 1902, for government of Philippines; United States v. Green, 136 Fed. 650, bank check is not "obligation for payment of money" within Rev. St., § 5451, punishing bribery of United States officers; dissenting opinion in Trono v. United States, 199 U. S. 540, 50 L. 299, 26 Sup. Ct. 121, majority holding one is not put in double jeopardy within act of 1902, for government of Philippines by conviction of murder in Philippine supreme court on appeal from judgment of trial court which acquitted of murder but convicted of assault.

Distinguished in Hackfeld v. United States, 197 U. S. 451, 49 L. 830, 25 Sup. Ct. 456, ship owners who have wrongfully brought aliens to United States and have received them back on board for deportation are not insurers of return of immigrants under Comp. St. 1901, p. 1299, § 10.

98 U. S. 453-462, 25 L. 240, JENNISON v. KIRK.

Syl. 2 (IX, 654). Miners' rules enforceable.

Approved in Revenue Min. Co. v. Balderston, 2 Alaska, 368, subsequent appropriator of excess waters on public domain for mining purposes must use same so as not to injure first appropriator's use thereof; Price v. McIntosh, 1 Alaska, 293, miner's rule fixing size of placer claims at 1320 feet long by 660 feet wide is void.

Syl. 3 (IX, 654). Statutory construction—Legislative debates.

Approved in Wadsworth v. Boysen, 148 Fed. 778, where only question of fact is whether Congress, when it passed act, understood that under certain provision beneficiary could select 640 acres of mineral land within certain area, debates may be resorted to to ascertain object of proviso; Miocene Ditch Co. v. Jacobson, 2 Alaska, 572, where ditch for carrying water for mining purposes is built across valid placer claim without condemnation proceedings or consent of mine owner, first appropriator prevails.

Syl. 4 (IX, 654). Water rights.

Approved in Morris v. Bean, 146 Fed. 426, where citizen of Wyoming sued in Montana federal circuit court to enjoin defendants residing in such state from diverting waters of stream rising in Montana and flowing into Wyoming, priority of appropriation governs; Meng v.

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Coffey, 67 Neb. 518, 108 Am. St. Rep. 712, 93 N. W. 719, settler who appropriates water by "squatter's rights" not recognized by state law or custom, and afterward gets patent from government, may, as against subsequent patentees on same stream, count time he appropriated water as squatter in making prescriptive time.

98 U. S. 463-470, 25 L. 253, FLAGSTAFF SILVER MINING CO. v. TARBET.

Syl. 1 (IX, 656). Mining locations—Direction of side lines.

Approved in Davis v. Shepherd, 31 Colo. 147, 72 Pac. 58, under congressional act of 1866, right to follow vein upon its strike is limited to lines of survey purporting to embrace it.

Syl. 3 (IX, 656). Mines—Location crosswise of lode.

Approved in Last Chance Min. Co. v. Bunker Hill etc. Co., 131 Fed. 588, 66 C. C. A. 299, following rule; Empire State Min. etc. Co. v. Bunker Hill etc. Co., 131 Fed. 600, 604, 66 C. C. A. 99, where end lines of amended location do not correspond with side lines of original claim, not error for court in determining collateral rights as against intervening locator to draw vertical planes through side lines of original claim and through end lines of amended claim, extending both in direction of dip; Watervale Min. Co. v. Leach, 4 Ariz. 61, 33 Pac. 421, under Rev. St. U. S., § 2320, providing that mining claim shall not exceed 1500 feet in length along vein, claim need not be located along course of vein.

Syl. 5 (IX, 657). Mines—Course of vein—Outcrop.

Approved in Last Chance Min. Co. v. Bunker Hill etc. Co., 131 Fed. 589, 66 C. C. A. 299, following rule.

98 U. S. 470-476, 25 L. 228, AMY v. DUBUQUE.

Syl. 4 (IX, 659). Limitations—Bond coupons.

Approved in Wilkinson v. John Hancock etc. Ins. Co., 27 R. I. 149, 61 Atl. 44, where policy payable to insured's administrator provided for payment to beneficiary within twenty-four hours after satisfactory proof of death, and that action must be brought within two years after accrual of action, cause of action accrued twenty-four hours after proof of death, though no administrator appointed.

98 U. S. 476-479, 25 L. 237, HARKNESS v. HYDE.

Syl. 1 (IX, 659). Treaty reserving Indian lands.

Approved in Keokuk v. Ulam, 4 Okl. 13, 38 Pac. 1083, where tribe located on reservation under treaty, and reservation is afterward included in organized county and territory, and tribe surrenders its interest in reservation and members take allotments, their personalty is subject to county taxes.

Syl. 2 (IX, 660). Process served on Indian reservation.

Approved in Murray v. Strong, 2 Alaska, 519, judgment obtained in Canada against resident of Alaska on notice served in Alaska gave

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Canadian court no jurisdiction; American etc. Colony Co. v. Schuler, 34 Tex. Civ. 566, 79 S. W. 374, under petition by domestic stockholders in foreign land corporation which acquired land in Texas for which it failed to pay, local court can only determine plaintiff's interest in and partition Texas lands; Northwestern etc. Ins. Co. v. Kidder, 162 Ind. 392, 70 N. E. 492, 66 L. R. A. 89, arguendo.

Syl. 3 (IX, 661). Waiver of objection to service.

Approved in Chicago Bldg. etc. Co. v. Pewthers, 10 Okl. 729, 63 Pac. 965, following rule; Lathrop etc. Co. v. Interior Const. etc. Co., 150 Fed. 670, special appearance of foreign corporation defendant in state court for purpose of insisting that no valid service made upon it is not submission to jurisdiction; Davis v. Cleveland etc. Ry. Co., 146 Fed. 407, special appearance to move to quash attachment on ground that court had no jurisdiction of defendant or property attached is not general appearance; Williamson v. Liverpool etc. Ins. Co., 141 Fed. 57, where motion to strike out portion of petition erroneously sustained and ruling excepted to, plaintiff did not waive error by amending; Stonega Coal etc. Co. v. Louisville etc. R. Co., 139 Fed. 272, where federal court had no jurisdiction because neither party resided in district and objection raised by demurrer, objection not waived by defendant's appearance at taking of depositions without insisting on objection; Groel v. United Elec. Co., 69 N. Y. Eq. 404, 60 Atl. 825, defendant may take advantage of insufficient service in equity by plea to jurisdiction reciting special appearance; Fisher v. Crowley, 57 W. Va. 319, 50 S. E. 425, defect in summons not waived by pleading to merits after overruling of motion to quash, to which exception taken; dissenting opinion in Boston etc. R. Co. v. Gokey, 149 Fed. 48, majority holding under Comp. St. 1901, p. 549, § 5, circuit court of appeals has no jurisdiction to pass on questions challenging circuit court's jurisdiction.

98 U. S. 479-485, 25 L. 233, WASHINGTON ETC. R. R. CO. v. VARNELL.

Syl. 2 (IX, 663). Exceptions to instructions.

Approved in Ball v. United States, 147 Fed. 43, applying rule in prosecution for murder.

98 U. S. 486-491, 25 L. 194, UNITED STATES v. THOMPSON.

Syl. 1 (IX, 663). Government not barred by state limitations.

Approved in Tyee Consol. Min. Co. v. Langstedt, 1 Alaska, 447, ten year statute of limitations begins to run in favor of adverse possessor of part of mining claim from time of location and not from date of location. See 101 Am. St. Rep. 151, 182, note.

Syl. 3 (IX, 664). State law as rule of decision.

See 101 Am. St. Rep. 152, 164, note.

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98 U. S. 514-517, 25 L. 256, BRICK v. BRICK.

Syl. 2 (IX, 666). Parol to vary writing.

Approved in Barcus v. Gates, 130 Fed. 367, where attorney employed in writing to collect sums on percentage, of which defendant defrauded, and it appeared expected settlement, not made, and suit brought and attorney had to look up evidence which defendant did not supply and to collect decree, such services not embraced in written contract; Humphrey v. Timken Carriage Co., 12 Okl. 432, 75 Pac. 534, in action on order for goods which sets out order in full and alleges order duly accepted and goods shipped to defendant, oral evidence that order not given as purchase but for different purpose, is admissible; Weiseham v. Hocker, 7 Okl. 254, 54 Pac. 465, admitting parol to show deed absolute was mortgage and that bond given by grantee for reconveyance if debt paid was intended as defeasance and not bond for title; Earle v. Owings, 72 S. C. 364, 51 S. E. 981, admitting testimony of contemporaneous agreement that when land sold to four defendants, title to be taken in name of one and grantor was to give each defendant deed on payment of price and release mortgage therefrom.

(IX, 666.) Miscellaneous. Cited in James v. Gray, 131 Fed. 408, 65 C. C. A. 385, loan by wife to husband from her separate property is provable as debt against his bankrupt estate, irrespective of its enforceability under state law.

98 U. S. 528-541, 25 L. 219, HOOPER v. ROBINSON.

Syl. 5 (IX, 668). Insurability of contingent interest.

Approved in Althouse v. McMillan, 132 Mich. 148, 92 N. W. 942, under contract of sale at "$6.35 per 100 sets of headings, delivered, less New York rates of freight, terms net 30 days from date of shipment," title passed to vendee on delivery to carrier.

98 U. S. 541-546, 25 L. 196, UNION PACIFIC R. R. CO. v. COUNTY COMMISSIONERS.

Syl. 1 (IX, 669). Recovery of taxes paid under protest.

Approved in United States v. New York etc. S. S. Co., 200 U. S. 494, 50 L. 571, 26 Sup. Ct. 327, purchase of documentary stamps without protest and affixing stamps to manifests is not under duress though clearance papers for vessel could not be procured without delivery to collector of stamped manifests; Newhall v. Jordan, 149 Fed. 589, importer of Porto Rican goods who entered same and purchased revenue stamps without protest cannot recover tax, though goods not taxable; Kahn v. Herold, 147 Fed. 579, where at time executors paid revenue inheritance tax on life estate under protest they did not know life tenant had died, payment was not voluntary; Morris v. New Haven, 78 Conn. 675, 63 Atl. 124, where at time taxes paid collector had no warrant authorizing him to collect taxes from plaintiff on tax list in question, payment under protest was voluntary payment; Phoebus v. Manhattan Club, 105 Va. 150, 52 S. E. 841, mere declaration of taxpayer, indorsed on stub of official tax book, that payment made under protest, does not

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show involuntary payment; Shirley v. Waukesha, 124 Wis. 242, 102 N. W. 577, where plaintiff's attorney voluntarily paid street improvement assessment so that she could not recover it because of invalidity of assessment, she could not sue for reassessment to reduce assessment paid.

98 U. S. 555-559, 25 L. 212, BARNET v. NATIONAL BANK.

Syl. 1 (IX, 672). Usury as setoff against national bank.

Approved in Gunby v. Armstrong, 133 Fed. 434, 66 C. C. A. 627, under Louisiana statute authorizing recovery of usurious interest paid, if suit brought within twelve months after payment, it cannot be claimed in any form.

98 U. S. 559-565, 25 L. 222, ST. LOUIS, I. M. & S. RY. CO. v. LOPTIN,

Syl. 1 (IX, 673). Railroad charter tax exemption.

Approved in Powers v. Detroit etc. Ry. Co., 201 U. S. 560, 50 L. 866, 26 Sup. Ct. 556, tax exemption contract created by Mich. Laws, 1855, p. 305, § 9, providing that company shall pay annual percentage of capital stock in lieu of other taxes.

98 U. S. 565-568, 25 L. 237, UNITED STATES v. SHERMAN.

Syl. 1 (IX, 674). Seizure—Probable cause.

Approved in Agnew v. Haymes, 141 Fed. 637, under Rev. St., §§ 970, 989, proof of probable cause for seizure by revenue officer is defense and may be made though decree for claimant in forfeiture proceeding failed to make certificate of probable cause where proof shows seizure made by direction of internal revenue commissioner.

Syl. 2 (IX, 674). Probable cause—Interest on judgment—Seizures.

Distinguished in Haymes v. Brown, 132 Fed. 529, under Rev. St., § 989, fact that revenue officer made unwarranted seizure with probable cause or under orders from superior, is no defense.

Syl. 3 (IX, 674). Interest on judgment against government.

Approved in Watts v. United States, 129 Fed. 226, in suit against United States, under special act for damages for loss of British vessel through collision with naval vessel, decree cannot allow interest as part of damages.

98 U. S. 569-620, 25 L. 143, UNITED STATES v. UNION PAC. R. R. CO.

Syl. 2 (IX, 675). Equity bill—Multifariousness.

Approved in Brown v. Tilley, 25 R. I. 584, 57 Atl. 382, where different lots deeded to seperate children on condition of annuity to mother, bill by mother to enforce payment of annuity against administrator and all heirs of father, present owners of parcels, and administrators of deceased heirs not multifarious.

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Syl. 17 (IX, 677). Trusts—Legal right and use in one.

Approved in Young v. Mercantile Trust Co., 140 Fed. 62, bill for accounting alleging complainant delivered securities to defendant as trustee and depository to hold and deliver them as authorized by complainant does not show trust relation so as to give equity jurisdiction.

98 U. S. 621-630, 25 L. 188, NATIONAL BANK v. MATTHEWS.

Syl. 1 (IX, 677). Objection to conveyance to corporation.

Approved in Watkins v. Iowa Cent. Ry. Co., 123 Iowa, 400, 98 N. W. 914, reaffirming rule; Iowa etc. Min. Co. v. United States etc. Guaranty Co., 146 Fed. 439, where foreign corporation was acting as corporation in Iowa at time it made contract in suit, it is no defense to action thereon that plaintiff had not complied with Iowa Code, § 1637, requiring foreign corporations to file copies of articles of incorporation; Brigham v. Peter Bent Brigham Hospital, 134 Fed. 527, 67 C. C. A. 393, where testator made trust devise to accumulate for term and then be transferred to corporation to be organized, to be used in founding hospital, fact that at testator's death, charitable corporation not permitted by law to hold property to amount of devise did not invalidate gift as to excess; Tidwell v. Chiricahua Cattle Co., 5 Ariz. 361, 362, 53 Pac. 194, 195, validity of conveyance by settler on government lands to corporation can be questioned on ground of incapacity of corporation to acquire title to such lands only by government in direct proceedings; State v. American Book Co., 69 Kan. 10, 13, 76 Pac. 414, 1 L. R. A. (N. S.) 1041, contract made with foreign corporation before it has obtained permission under statutes to do business in state are not cancelable at suit of one of contracting parties; Farmers' Deposit Nat. Bank v. Western Penn. Fuel Co., 215 Pa. 119, 64 Atl. 375, in action for rent against tenant in building owned and occupied in part by national bank, fact that bank had no charter authority to erect office building and rent offices is no defense; Scott v. Farmers' etc. Nat. Bank, 97 Tex. 57, 75 S. W. 15, judgment creditor of president of corporation cannot, by purchase at execution sale of property held by him in trust, defeat corporation's title on ground of corporation's want of power to acquire such property.

Distinguished in Dunbar v. American Tel. Co., 224 Ill. 31, 79 N. E. 430, minority stockholders may restrain ultra vires sale by corporation of majority stock to other corporation to prevent competition.

Syl. 2 (IX, 678). National bank—Loan on realty.

Approved in Waterbury v. McKinnon, 146 Fed. 739, fact that lender, resident of Montana, procured note and mortgage securing same to be executed in name of Canadian to avoid taxation, is no defense to foreclosure by Canadian; Fidelity Ins. Co. v. German Sav. Bank, 127 Iowa, 596, 103 N. W. 960, where insurance company received bank stock, certificates of deposit and cash in payment of deposit in insolvent bank, it could not repudiate transaction on ground of ultra vires; Schoonover v. Petcina, 126 Iowa, 267, 100 N. W. 493, where private banker sold out to national bank in which he acquired stock and to which he transferred assets of bank, including notes held by him in connection there-

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with, notes not taxable as his moneys and credits; Buhrer v. Baldwin, 137 Mich. 269, 100 N. W. 470, where statute provided that county treasurer shall deposit receipts in state or federal bank and made it felony to violate it, fact that funds deposited with partnership engaged in banking is no defense to action on bond; Hinds County v. Natchez etc. R. R. Co., 85 Miss. 629, 107 Am. St. Rep. 310, 38 So. 191, stockholders of corporation which sells its franchise cannot set up want of authority of purchasing corporation to buy same in order to defeat sale; Norwich etc. Ins. Co. v. Buchalter, 102 Mo. App. 340, 76 S. W. 486, where Kansas statute prohibited foreign insurance companies to do business except through resident agent, and defendant, appointed such agent, executed bond to faithfully perform such duties, fact that scheme of appointment was to avoid Kansas statutes on bond is no defense to action.

Distinguished in Poling v. Board, 56 W. Va. 255, 49 S. E. 149, contract of sale to board of education of articles for use in free school made by member of board of education is void and unenforceable.

Syl. 3 (IX, 680). Corporate power—Estoppel of beneficiary.

Approved in Iowa etc. Min. Co. v. United States etc. Guaranty Co., 146 Fed. 439, 440, where foreign corporation was acting as corporation in Iowa, at time it made contract in suit, it is no defense to action thereon that plaintiff had not complied with Iowa Code, § 1637, requiring foreign corporations to file copies of articles of incorporation; Burnes v. Burnes, 132 Fed. 497, in absence of inhibition, solvent corporation which accepts transfer of its own shares under agreement to pay to former owners an annuity and has received dividends on such stock cannot avoid contract as ultra vires; Wisconsin Lumber Co. v. Green, etc. Tel. Co., 127 Iowa, 360, 109 Am. St. Rep. 387, 101 N. W. 745, 69 L. R. A. 968, agreement by corporation to repurchase stock from certain stockholders at par if it should sell its franchise and that stockholders should receive dividend at par is not void; Ober v. Stephens, 54 W. Va. 360, 46 S. E. 197, upholding contract for commissions for sale of land by broker who had no state license; Third Nat. Bank v. Buffalo German Ins. Co., 193 U. S. 588, 48 L. 803, 24 Sup. Ct. 524, arguendo.

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XCIX UNITED STATES.

99 U. S. 1-10, 25 L. 309, WOLF v. STIX.

Syl. 5 (IX, 686). Bankruptcy—Debt of replevin claimant.

Approved in Laffoon v. Kerner, 138 N. C. 286, 50 S. E. 656, where on appeal from justice defendant furnished bond and on appeal he pleaded discharge in bankruptcy obtained pendente lite, and no judgment rendered against him, judgment could not be rendered against sureties.

Distinguished in In re Thompson Milling Co., 144 Fed. 315, 316, attorney's fee provided for in note payable on condition that default made in payment, and it is placed with attorney for collection or suit brought on it, is not provable against bankrupt estate.

Syl. 6 (IX, 686). Bankruptcy discharge—Replevin sureties.

Approved in Klipstein v. Allen-Miles Co., 136 Fed. 389, 69 C. C. A. 229, where debt sued on in garnishment proceedings was discharged pending suit by proceedings in bankruptcy against debtor, plaintiff could not have judgment thereon against debtor; Boyd v. Agricultural Ins. Co., 20 Colo. App. 43, 76 Pac. 990, liability of surety for bankrupt not altered by discharge of bankrupt; World Pub. Co. v. Rialto Grain Co., 108 Mo. App. 485, 83 S. W. 783, where liability of sureties on appeal bond is fixed prior to adjudication in bankruptcy as to principal, sureties remain liable, though judgment inoperative as to principal.

99 U. S. 20-25, 25 L. 314, HUSSEY v. SMITH.

Syl. 1 (IX, 686). Sale of interest of townsite occupant.

Approved in Sawyer v. Van Hook, 1 Alaska, 110, entry on town lot and depositing thereon of building material with intention of erecting dwelling constitutes settlement within townsite act; Shy v. Brockhause, 7 Okl. 41, 54 Pac. 308, townsite occupant may, prior to passing of title from government, maintain ejectment against his tenant; City of Guthrie v. Beamer, 3 Okl. 662, 41 Pac. 650, where lands entered prior to survey for townsite and settlers adopted provisional government, which platted town and later townsite trustees appointed, who approved plat, occupant of lands platted as street devested of interest in lands; Hagar v. Wikoff, 2 Okl. 587, 39 Pac. 283, interest in town lot on public land acquired by occupant being transferable, grantee succeeds to all rights of occupant as against grantor's tenant; McKennon v. Winn, 1 Okl. 335, 33 Pac. 585, 22 L. R. A. 501, upholding as between parties contract by actual settler concerning possessory

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rights, and title to be acquired in future from United States, though there was at time no act of Congress by which title could be acquired; Twiggs v. State Board of Land Commrs., 27 Utah, 247, 75 Pac. 731, purchaser of possessory rights of original settler entitled to preferential right to purchase under Rev. St. 1898, § 2337.

Syl. 3 (IX, 687). De facto officer's acts binding.

Approved in Monahan v. Lynch, 2 Alaska, 134, upholding appointment of poundmaster by de facto members of town council; Morford v. Territory, 10 Okl. 745, 63 Pac. 960, 54 L. R. A. 513, perjury may be committed in trial before probate court presided over by one not licensed lawyer; Ex parte Haly, 1 Okl. 15, 25 Pac. 515, United States commissioner could commit one on charge of assault to custody of United States marshal.

99 U. S. 25-30, 25 L. 294, MILLS v. SCOTT.

Syl. 4 (IX, 687). Equity—Enforcement of stockholder's liability.

Approved in Covell v. Fowler, 144 Fed. 538, prior to levy of assessment, bank stockholder cannot be pursued by suit to enforce subscription liability.

Syl. 6 (IX, 688). When debt lies.

Approved in United States v. Alcorn, 145 Fed. 1000, proposal bond given by bidder for mail contract conditioned as required by Comp. St. 1901, p. 2695, being absolute undertaking to pay amount named as liquidated damages, in action thereon actual damages not subject of inquiry.

99 U. S. 48-67, 25 L. 424, PLATT v. UNION PACIFIC R. R. CO.

Syl. 1 (IX, 690). Deed of trust held to be mortgage.

Approved in Hunt v. Springfield etc. Ins. Co., 196 U. S. 50, 49 L. 382, 25 Sup. Ct. 179, condition in fire policy for unconditional ownership of property by insured and for nonexistence of chattel mortgage is broken by existence of trust deed to secure debt.

Syl. 8 (IX, 691). Statutory construction—Surrounding circumstances.

Approved in United States v. Smith, 197 U. S. 393, 49 L. 803, 25 Sup. Ct. 489, prohibition against convocation of general court-martial by commander of fleet without order of President, made by Rev. St., § 1624, art. 38, while fleet is in United States waters, applies only to continental limits of United States; United States v. Ninety-nine Diamonds, 139 Fed. 965, 2 L. R. A. (N. S.) 185, where one who had right of possession of and lien on imported merchandise, together with option to purchase at fixed price, declared, in making entry of goods, that he was owner, there was no offense under Comp. St. 1901, p. 1895.

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99 U. S. 72-78, 25 L. 301, DOGGETT v. FLORIDA RAILROAD CO.

Syl. 3 (IX, 692). No construction when intent plain.

Approved in Farmers' Loan etc. Co. v. Sioux Falls, 131 Fed. 903, under Const. S. D., art. 13, § 4, as amended in 1902, city already indebted to amount nearly equal to fifteen per cent of assessed value of property therein for previous year could not issue waterworks bonds which would increase debt to twenty-three per cent of assessed valuation.

99 U. S. 80-85, 25 L. 407, BARROW v. HUNTON.

Syl. 2 (IX, 694). Removal—Proceedings subsequent to judgment.

Approved in Kirk v. United States, 131 Fed. 339, upholding jurisdiction to restrain collection of execution on forfeited recognizance.

99 U. S. 100-112, 25 L. 366, GRAFTON v. CUMMINGS.

Syl. 1 (IX, 696). Statute of frauds—Memorandum.

Approved in Usher v. Daniels, 73 N. H. 208, 60 Atl. 747, where memorandum of sale within statute of frauds signed by plaintiff's agent in own name, as he was orally authorized to do, parol evidence admissible to identify plaintiff as real party in interest.

Distinguished in Stuart v. Mattern, 141 Mich. 691, 105 N. W. 37, where owner, in writing, requested agent to sell land, and latter procured purchaser and contract naming him was signed by agent in name of owner, contract complied with statute of frauds.

99 U. S. 112-119, 25 L. 470, TOWN OF WEYAUWEGA v. AYLING.

Syl. 1 (IX, 697). Town bonds—Estoppel to question legality.

Approved in dissenting opinion in Wright v. East Riverside Irr. Dist., 138 Fed. 327, majority holding where irrigation district prepared bonds, coupons of which contained lithographed signature of then secretary, but bonds not delivered till eighteen months later, but neither date nor signature to coupons changed, and new secretary signed bonds, bonds void.

Distinguished in Gage v. McCord, 5 Ariz. 234, 51 Pac. 979, territorial bonds once dated and executed under Act Cong., June 25, 1890, § 4, may be thereafter negotiated by successors of officers.

99 U. S. 119-129, 25 L. 370, CASE v. BEAUREGARD.

Syl. 5 (IX, 698). Firm assets applied to firm debts.

Approved in People's Nat. Bank v. Wilcox, 136 Mich. 581, 100 N. W. 29, where surviving partner, as such and individually, executed mortgage on firm property to pay firm debts, mortgagees have lien on firm property prior to individual creditors of partner whose executions levied after mortgage; Reddington v. Franey, 124 Wis. 593, 102 N. W. 1066, where incoming and retiring partner agreed that latter should pay outstanding debts, former not liable for firm debts.

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99 U. S. 149-151, 25 L. 430, KLEIN v. NEW ORLEANS.

Syl. 1 (IX, 702). Levy on lands held for public purpose.

Approved in The John McCracken, 145 Fed. 707, vessels owned by port of Portland, and used by it in maintaining navigation in harbor, are not seizable by United States in civil suit in rem to recover damages for marine tort.

99 U. S. 152-161, 25 L. 348, UNITED STATES v. FORT SCOTT.

Syl. 1 (IX, 702). City improvement bonds—Taxes.

Approved in City of Superior v. Marble Sav. Bank, 148 Fed. 10, where city charter authorized council to issue sewerage bonds chargeable to particular lots described, and that city shall pay principal and interest when due, and reimburse itself by tax on lots mentioned in bonds, bonds are general obligations of city; Brockenbeough v. Board of Water Commrs., 134 N. C. 14, 46 S. E. 32, issue of bonds under Priv. Laws 1903, p. 440, c. 196, providing that they shall be paid from income of city waterworks and that none of city's funds raised by taxation shall be applied to their payment, is not contracting of debt by city.

99 U. S. 161-168, 25 L. 317, HARRIS v. McGOVERN.

Syl. 2 (IX, 703). Adverse possession—Subsequent disability.

Approved in Schauble v. Schulz, 137 Fed. 396, 69 C. C. A. 581, construing Rev. Codes N. D. 1899, § 3491a, relating to adverse possession.

99 U. S. 168-179, 25 L. 383, GORDON v. GILFOIL.

Syl. 3 (IX, 703). Abatement—Pendency of state suit.

Approved in German Savings & Loan Society v. Tull, 136 Fed. 12, 69 C. C. A. 1, following rule; Slaughter v. Mallet Land etc. Co., 141 Fed. 290, pendency of state action of trespass to try title and to remove cloud from title not ground for abatement of subsequent federal suit between same parties to quiet title to same land; Burk v. McCaffrey, 136 Fed. 696, fact that counterclaim is set up in state action is not ground for abatement of federal action for same subject matter; Loewe v. Lawlor, 130 Fed. 633, pendency of state suit cannot be pleaded in abatement of federal action to recover treble damages under Anti-trust Act, § 7; Lake Co. v. Schradsky, 31 Colo. 184, 71 Pac. 1106, pendency of writ of error in federal supreme court to review judgment of dismissal for want of jurisdiction entered by circuit court, where no supersedeas granted, does not bar state action between same parties for same cause of action.

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99 U. S. 180-183, 25 L. 451, BURT v. PANJAUD.

Syl. 3 (IX, 704). Ejectment—Possession evidence of title.

Approved in Lasswell v. Kitt, 11 N. M. 463, 70 Pac. 562, where one made location on land and fully complied with law to obtain title, he may maintain ejectment against subsequent locator.

99 U. S. 191-201, 25 L. 319, SOUTHERN EXPRESS CO. v. WESTERN NORTH CAROLINA R. R. CO.

Syl. 3 (IX, 705). Corporation's contract presumed valid.

Approved in In re Castle Braid Co., 145 Fed. 234, contract by corporation to purchase stock of directors made to settle pending litigation is prima facie valid, where bad faith or insolvency of corporation at time of contract not shown.

Syl. 5 (IX, 705). Specific performance—Contract for personalty.

Approved in Mutual Life Ins. Co. v. Blair, 130 Fed. 976, where life policy provided for settlement by issuance to insured's wife of annuity policy payable in twenty annual installments, policy was subject of specific performance.

Syl. 6 (IX, 705). Specific performance—Power of revocation.

Approved in Brewster v. Lanyon Zinc Co., 140 Fed. 812, construing covenants and conditions for forfeiture in oil and gas lease.

Syl. 7 (IX, 706). Receiver—Railroad contract to furnish facilities.

Cited in Wightman v. Yaryan Co., 217 Ill. 381, 108 Am. St. Rep. 258, 75 N. E. 505, arguendo.

99 U. S. 201-212, 25 L. 431, GODDEN v. KIMMELL.

Syl. 1 (IX, 706). Stale claims not favored.

Approved in Ryan v. Woodin, 9 Idaho, 531, 75 Pac. 262, refusing to cancel judgment and sheriff's deed resulting from execution sale based thereon where suit brought over six years after execution of deed; dissenting opinion in Werner Co. v. Encyclopedia Brit. Co., 134 Fed. 1024, majority holding where complainant and predecessors in title had no knowledge of infringing articles until less than eighteen months prior to suit, and infringing articles did not appear in defendants' publication at first, no laches.

Syl. 3 (IX, 709). Equity—Analogy of limitation statutes.

Approved in Williams v. Neely, 134 Fed. 13, 69 L. R. A. 232, 67 C. C. A. 171, it is not laches for one having equitable defense to note which is being sued on in another court to wait till affirmative action at law on subject of defense is barred and until equitable defense is rejected in law action on note, before seeking to enjoin latter action till equitable defense allowed; Moore v. Nickey, 133 Fed. 292, 66 C. C. A. 667, suit to recover mining stock under written contract brought nine years after contract and eight years after demand is

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barred where state law would bar it in five years; dissenting opinion in Burrus v. Cook, 117 Mo. App. 403, 93 S. W. 893, majority holding surety of judgment debtor paying judgment may sue cosurety for contribution after running of limitations.

Syl. 4 (IX, 709). Stale claims—Reasons for delay.

Approved in Patterson v. Hewitt, 11 N. M. 41, 66 Pac. 564, 55 L. R. A. 658, holding eight years' delay in bringing suit to enforce rights under verbal trust relating to mining locations barred right.

99 U. S. 214-220, 25 L. 410, SUPERVISORS v. GALBRAITH.

Syl. 1 (IX, 710). Directory statutes.

Approved in Mestas v. Diamond Coal etc. Co., 12 Wyo. 427, 430, 76 Pac. 569, 570, Const. 1890, art. 10, § 4, providing that no law shall be enacted limiting amount of recovery for personal injuries, did not repeal Rev. St. 1887, § 2364b, limiting recovery in actions for death to $5,000.

99 U. S. 221-224, 25 L. 321, FARRELL v. UNITED STATES.

Syl. 1 (IX, 711). Revenue tax—Destruction of goods in bond.

Approved in Powell v. United States, 135 Fed. 882, upholding regulations prescribed by commissioner of internal revenue for claims for rebate of taxes paid on manufactured tobacco and snuff.

99 U. S. 229-234, 25 L. 373, KING v. UNITED STATES.

Syl. 1 (IX, 711). Defense of sureties of collector's bond.

Approved in Lake Co. v. Neilon, 44 Or. 19, 74 Pac. 213, fact that taxes were collected by tax collector under defective warrant is no defense to sureties sued for collector's conversion of moneys so collected.

99 U. S. 235-256, 25 L. 339, FOSDICK v. SCHALL.

Syl. 2 (IX, 712). Mortgage lien on after-acquired property.

Approved in Tilford v. Atlantic Match Co., 134 Fed. 927, where stockholding corporation acquired nearly all stock in manufacturing company and manager of both companies agreed to furnish latter with boiler, title to remain in seller until paid for, and acceptance signed by first company by manager, and no payments made by it, but two made by manufacturing company, receiver of first company not entitled to fund derived from sale of boiler.

Syl. 3 (IX, 712). Receiver's possession is court's.

Approved in Paige v. Schenectady Ry. Co., 178 N. Y. 114, 70 N. E. 217, receiver by abandoning use of street for railroad does not give consenting owners of fee in street right to enjoin subsequent operation of road.

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Syl. 4 (IX, 712). Mortgage lien—After-acquired property.

Approved in General Fire Ext. Co. v. Lamar, 141 Fed. 357, 358, master's finding that appliances were attached to factory presumed correct in determining whether appliances were subject to prior mortgage on building and machinery, in absence of evidence as to character of appliances; Missouri Pac. Ry. Co. v. Bradbury, 106 Mo. App. 458, 79 S. W. 968, where railroad abandoned right of way without removing tracks, rails became property of owner of land. See 99 Am. St. Rep. 253, note.

Syl. 5 (IX, 714). Receivers—Payment of debts pending foreclosure.

Approved in Atchison etc. Ry. Co. v. Osborn, 148 Fed. 610, 611, holder of unsecured claim for damages arising from negligence of mortgagor railroad prior to appointment of receiver is not entitled to priority of payment over mortgage creditor; Le Hote v. Boyet, 85 Miss. 642, 38 So. 1, 2, claims for labor performed just prior to receivership, necessary to continuance of business of corporation and to preserve property, are preferred over mortgage creditors; Perrin etc. Printing Co. v. Cook Hotel etc. Co., 118 Mo. App. 59, 93 S. W. 341, receiver's certificates issued for completion of building on leased land are not entitled to priority over claim for rent during occupancy of receiver; Vila v. Grand Island etc. Co., 68 Neb. 230, 110 Am. St. Rep. 408, 94 N. W. 140, holding labor claims not preferential lien over mortgage; Security Sav. & Trust Co. v. Globe etc. R. Co., 44 Or. 374, 74 Pac. 921, services rendered railroad within ninety days of appointment of receiver in logging venture in which railroad interested are not prior to mortgage lien; dissenting opinion in Gregg v. Metropolitan Trust Co., 197 U. S. 192, 49 L. 721, 25 Sup. Ct. 415, majority holding claim for ties necessary to preservation of railroad furnished within six months of appointment of receiver is not entitled to preference over prior mortgage.

Distinguished in Gregg v. Metropolitan Trust Co., 197 U. S. 188, 49 L. 719, 25 Sup. Ct. 415, claim for ties necessary for preservation of railroad furnished within six months of appointment of receiver is not entitled to preference over prior mortgage.

Syl. 7 (IX, 718). Railroad mortgages—Current debts.

Approved in Mersick v. Hartford etc. R. R. Co., 76 Conn. 18, 20, 22, 23, 24, 100 Am. St. Rep. 977, 55 Atl. 667, 668, 669, persons furnishing to street railway supplies needed to operate road and money to pay wages, after default in payment of interest on bonds, but before trustee took charge, are not entitled to preference over bondholders from proceeds of sale.

Syl. 10 (IX, 718). Railroad receivers—Division of income.

Approved in Fordyce v. Omaha etc. R. R. Co., 145 Fed. 559, where several railroads owned by different companies operated together as single system, charges made by one against another for rental of

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locomotives and joint office expenses are not entitled to priority over mortgage given by charged company where there was no diversion of net income to mortgagee.

99 U. S. 256, 257, 25 L. 344, FOSDICK v. CAR CO.

Syl. 1 (IX, 719). Mortgage lien on after-acquired property.

See 99 Am. St. Rep. 253, 259, note.

99 U. S. 261-265, 25 L. 435, CAMPBELL v. RANKIN.

Syl. 1 (IX, 720). Ejectment—Possession is evidence of title.

Approved in Bulette v. Dodge, 2 Alaska, 431, actual prior possession of part of mining claim gives possession of whole; Walsh v. Ford, 1 Alaska, 152, actual prior possession of first occupant of lots belonging to United States is better than subsequent possession of last; Lasswell v. Kitt, 11 N. M. 463, 70 Pac. 562, where one made location on land and fully complied with law to obtain title, he may maintain ejectment against subsequent locator.

Syl. 2 (IX, 720). Judgment as res adjudicata.

Approved in Georgia Ry. etc. Co. v. Wright, 132 Fed. 917, where state court decided in suit between state and corporation that charter created contract precluding state from imposing tax over certain amount, decision concludes state in subsequent suit for taxes levied for different year under different statute; Defries v. McMeans, 121 Iowa, 541, 97 N. W. 65, judgment that land contracts not assessable for particular year estops defendant from claiming contracts assessable for subsequent year; Territory v. Hopkins, 9 Okl. 150, 59 Pac. 981, applying rule to decree upholding validity of bonds.

Syl. 3 (IX, 721). Parol to ascertain issue—Former judgment.

Approved in Halford v. James, 136 Fed. 555, 69 C. C. A. 263, following rule.

Syl. 5 (IX, 721). Mines—Parol proof—Actual possession.

Approved in Webb v. Carlon, 148 Cal. 558, 83 Pac. 998, where location by defendant's grantor was in fact made before plaintiff entered on land, and notice of it was visible and boundaries marked, error in date of location notice is immaterial.

99 U. S. 265-272, 25 L. 322, UNITED STATES v. PUGH.

Syl. 1 (IX, 721). Statutes—Contemporaneous construction.

Approved in Pitts v. Logan County, 3 Okl. 740, 41 Pac. 591, act of legislature attempting to regulate fees of clerks of district courts of territory is void.

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99 U. S. 273-285, 25 L. 412, WHEELING ETC. TRANSPORTATION CO. v. WHEELING.

Syl. 2 (IX, 723). Commerce—State tax on ships.

Approved in Old Dominion S. S. Co. v. Virginia, 198 U. S. 306, 309, 49 L. 1062, 1063, 25 Sup. Ct. 686, vessels employed in interstate commerce wholly within limits of state are subject to state taxation, though enrolled at port of another state; Commonwealth v. Ayer etc. Tie Co., 117 Ky. 169, 77 S. W. 688, home port of vessel engaged in interstate commerce is its situs for taxation, though its owner resides in different state; Harrell v. Speed, 113 Tenn. 228, 106 Am. St. Rep. 814, 81 S. W. 841, one running bar on vessel belonging to Arkansas corporation and plying between Arkansas and Tennessee is subject to Tennessee license tax for running bar while vessel is at Tennessee landing.

Syl. 4 (IX, 723). Local assessments on ships.

Approved in Ayer etc. Tie Co. v. Kentucky, 202 U. S. 422, 50 L. 1087, 26 Sup. Ct. 678, under Comp. St. 1901, p. 2831, § 21, domicile of owner or actual situs of vessel, and not place of enrollment of vessel, determines tax situs of vessel.

99 U. S. 298-309, 25 L. 473, PHELPS v. McDONALD.

Syl. 3 (IX, 725). Equity—Res out of jurisdiction.

Approved in Western Union Tel. Co. v. Pittsburg etc. Ry. Co., 137 Fed. 437, applying rule in suit for specific performance of telegraph right of way contracts with consolidated railroads; O'Connor v. Root, 130 Iowa, 560, 107 N. W. 610, where administrator collected all assets of estate of resident decedent, and all creditors are residents, equity may enjoin one of each creditors from petitioning for appointment as administrator in another state; Fuller v. Horner, 69 Kan. 470, 77 Pac. 89, applying rule in suit to set aside fraudulent conveyance.

99 U. S. 309-325, 25 L. 387, UNIVERSITY v. PEOPLE.

Syl. 3 (IX, 726). Taxation—Charter obligation.

Cited in State ex rel Louisiana Imp. Co. v. Board of Assessors, 111 La. 1001, 36 So. 98, arguendo.

99 U. S. 348-355, 25 L. 303, HOGE v. RAILROAD CO.

(IX, 728.) Miscellaneous. Cited in Iowa etc. Assn. v Gilbertson, 129 Iowa, 665, 106 N. W. 156, upholding Code Supp. 1902, § 1333d, requiring insurance companies, except county mutuals, not organized for profit, to pay tax of percentage of gross receipts after deducting amounts paid for losses.

99 U. S. 355-361, 25 L. 476, DENVER v. ROANE.

Syl. 1 (IX, 729). Accounting by executor of surviving partner.

Approved in Brew v. Cochran, 141 Fed. 462, where partnership articles provided that on death of any member his capital should re-

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main in firm until firm expired by term, and all but one partner died, and he transferred business to corporation in exchange for its stock which he held as trustee, administrator of one of deceased partners could sue for accounting prior to closing of partnership; Bowdish v. Metzger, 71 Kan. 754, 81 Pac. 484, where petition in suit to remove cloud and quiet title fails to plead statute under which defendants claim, but states nature, character or extent of title is unknown and prays disclosure of title, it states good cause of action for discovery and relief.

Syl. 2 (IX, 729). Allowance to surviving partner for winding up.

See 112 Am. St. Rep. 846, note.

99 U. S. 378-382, 25 L. 453, VAN NORDEN v. MORTON.

Syl. 2 (IX, 731). Federal equity—New state right.

Approved in Carlson v. Sullivan, 146 Fed. 479, one in possession of land claiming whole title is entitled to jury trial in action in territory; dissenting opinion in San Francisco Nat. Bank v. Dodge, 197 U. S. 112, 49 L. 687, 25 Sup. Ct. 384, majority enjoining enforcement of tax on shares of national bank stock under Cal. Pol. Code, §§ 3608-3610, at market value.

99 U. S. 398-401, 25 L. 437, SMITH v. RAILROAD CO.

Syl. 2 (IX, 735). Creditor's rights against debtor's debtor.

Approved in Craddock v. Fulton, 140 Fed. 429, suit, under Code W. Va. 1899, c. 106, permitting simple contract creditor of nonresident to sue at law and attach, is removable; Viquesney v. Allen, 131 Fed. 24, 65 C. C. A. 259, simple contract creditor cannot sue in equity to set aside fraudulent conveyance by debtor.

Distinguished in Briggs v. Traders' Co., 145 Fed. 258, under W. Va. Code 1899, c. 53, § 58; stockholder may sue in federal court for dissolution of corporation where it has ceased to do business; George v. Wallace, 135 Fed. 293, 68 C. C. A. 40, where assets of national bank in voluntary liquidation put in hands of one who was made trustee for benefit of another bank, which assumed obligations of first bank, holder of note executed by first bank as part of assumption contract may assert lien, though claim not reduced to judgment.

99 U. S. 441-449, 25 L. 327, KEELY v. SANDERS.

Syl. 5 (IX, 738). Establishment of martial law political question.

Approved in Moyer v. Peabody, 148 Fed. 875, whether or not state of insurrection exists in locality requiring use of state military is question for exclusive determination of state executive whose decision is not reviewable by courts.

Syl. 6 (IX, 738). Officer presumed duly appointed.

Approved in Reeve v. North Carolina Land etc. Co., 141 Fed. 833, upholding return to execution made by one who does not append to signature on return office held by him.

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(IX, 738.) Miscellaneous. Cited in Lynch v. Burt, 132 Fed. 429, 67 C. C. A. 305, right of redemption from execution sales is purely statutory.

99 U. S. 455-460, 25 L. 289, UNITED STATES v. KANSAS PACIFIC R. R. CO.

Syl. 2 (IX, 739). Railroad net earnings, how determined.

Approved in Bell v. St. Johnsbury etc. R. R. Co., 76 Vt. 53, 56 Atl. 109, sum necessary to keep railroad fences in repair, but which not actually expended, not deducted as operating expenses from gross earnings.

99 U. S. 463-482, 25 L. 438, DENVER & R. G. RY. CO. v. ALLING.

Syl. 2 (IX, 740). Railroad grant in praesenti.

Approved in Nicomen Boom Co. v. North Shore etc. Co., 40 Wash. 326, 82 Pac. 414, where complainant selected and perfected boom location, it could enjoin defendant from using conflicting location; Chesapeake etc. Ry. Co. v. Deepwater Ry. Co., 57 W. Va. 658, 659, 662, 664, 50 S. E. 897, 898, 899, 900, determining right to use of land as between two rival railroads.

Syl. 3 (IX, 740). Railroad grant of right of way.

Approved in Chesapeake etc. Ry. Co. v. Deepwater Ry. Co., 57 W. Va. 660, 673, 694, 50 S. E. 898, 903, 912, determining right to use of land as between two rival railroads.

(IX, 739.) Miscellaneous. Cited in Columbia Ave. Sav. Fund etc. Co. v. Dawson, 130 Fed. 176, enjoining bond issue for city waterworks where city had granted franchise to water company and entered into ten year contract for water for city purposes.

99 U. S. 499-504, 25 L. 330, WILSON v. SALAMANCA.

Syl. 2 (IX, 742). County railroad aid—Consolidation of roads.

Approved in Jones v. Missouri-Edison Elec. Co., 135 Fed. 157, stockholder in one of two consolidated corporations could not sue in equity to enforce rights based on theory that corporation was still in existence.

Distinguished in Jones v. Missouri-Edison Elec. Co., 144 Fed. 775, minority stockholders may avoid contract of corporation consolidating it with another where consolidation constituted fraud on them.

99 U. S. 505-508, 25 L. 354, GRIGSBY v. PURCELL.

Syl. 1 (IX, 742). Dismissal of appeal—Transcript not filed.

Approved in Rush v. Conner, 44 Fla. 171, 32 So. 797, following rule.

99 U. S. 508-512, 25 L. 482, UNITED STATES v. GERMANIC.

Syl. 1 (IX, 743). Extortion by government officer.

Approved in United States v. Schlierholz, 133 Fed. 333, 335, 336, and United States v. Schlierholz, 137 Fed. 620, 621, both holding spe-

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cial agent of Land Department appointed under Appropriation Act of 1897 (30 Stat. 32), is not officer within extortion statute; United States v. Cole, 130 Fed. 618, 619, cashier of mint appointed under Rev. St., § 3504, providing that mint superintendent shall appoint clerks and assistants, is not officer of mint within Rev. St., § 3506, providing superintendent shall be keeper of all coin and bullion except while same is in hands of other officers.

99 U. S. 539-546, 25 L. 355, YULEE v. VOSE.

Syl. 2 (IX, 745). Removal—Record must show cause.

Approved in Illinois etc. Ry. Co. v. Jones, 118 Ky. 165, 80 S. W. 486, where petition filed in state court does not prima facie show removable controversy, jurisdiction of federal court cannot be conferred by consent; State v. Southern Ry. Co., 135 N. C. 81, 47 S. E. 232, where complaint to corporation commission to compel railroad to deliver cars of coal to siding put no valuation on delivery, and removal petition alleged that matter in controversy involving right of railroad to manage its interstate business without interference by commission exceeds $2,000, removal denied.

99 U. S. 547-560, 25 L. 357, HARTELL v. TILGHMAN.

Syl. 1 (IX, 745). Federal jurisdiction—Patents—Diverse citizenship.

Distinguished in Harrington v. Atlantic etc. Telegraph Co., 143 Fed. 336, where owner of patent and controlling stockholder of corporation contracted for transfer of patents to corporation in exchange for stock, but stockholder transferred patent to corporation in disregard of agreement, federal court had jurisdiction of suit against corporation for infringing use though it also sought reconveyance; Hartman v. Park & Sons Co., 145 Fed. 371, and Cortelyou v. Chas. Eneu Johnson & Co., 138 Fed. 117, both arguendo.

(IX, 745.) Miscellaneous. Cited in American St. Car. Ad. Co. v. Jones, 142 Fed. 977.

99 U. S. 567-573, 25 L. 378, McBURNEY v. CARSON.

Syl. 3 (IX, 748). Trustee accepting Confederate money as payment.

Distinguished in York Co. Sav. Bank v. Abbot, 139 Fed. 993, denying jurisdiction over equity suit by lessee against nonresident lessor to enforce rights under lease by requiring defendant to elect to sell land or buy building thereon, where defendant has not appeared.

99 U. S. 578-582, 25 L. 420, PENCE v. LANGDON.

Syl. 5 (IX, 748). Contracts—Rescission must be prompt.

Approved in Parsons, Rich & Co. v. Lane, 97 Minn. 104, 106 N. W. 488, insurer by issuing policy without inquiry did not waive conditions as to title and ownership; Shevlin v. Shevlin, 96 Minn. 417, 105

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N. W. 265, holding transfer of stock made by younger brother to elder by fraud and duress not ratified; Burnham v. Burnham, 119 Wis. 516, 97 N. W. 179, where plaintiff expressed approval of deed and settlement and for three months treated matter as concluded, and after employing counsel to contest same for fraud he insisted on and procured mortgage to raise money to pay debts pursuant to settlement, he ratified settlement.

99 U. S. 582-592, 25 L. 331, UNITED STATES v. COUNTY OF MACON.

Syl. 2 (IX, 750). Mandamus to compel tax levy—Bonds.

Approved in Rose v. McKie, 145 Fed. 590, granting mandamus to compel levy of tax by town to pay judgment, though authority of town to tax is limited where not shown authority has been exhausted; Atchison etc. R. R. Co. v. Territory, 11 N. M. 676, 72 Pac. 16, claim against county merged into judgment carries with it all infirmities of want of authority of county commissioners to levy tax to pay claim.

Syl. 3 (IX, 750). Judgment on county bonds—Tax.

Approved in Atchison etc. R. R. Co. v. Territory, 11 N. M. 677, 72 Pac. 17, claim against county merged in judgment carries with it all infirmities of want of authority of county commissioners to levy tax to pay claim.

99 U. S. 592, 593, 25 L. 293, TERHUNE v. PHILLIPS.

Syl. 1 (IX, 751). Patents—Judicial notice of prior use.

Approved in Conderman v. Clements, 147 Fed. 917, holding void Conderman patent No. 669,621, for pleasure wheel similar to Ferris wheel; Baker v. Duncombe Mfg. Co., 146 Fed. 746, holding void, for lack of invention, Baker patents Nos. 726,812, and 736,346, for process for treating coffee.

99 U. S. 610-619, 25 L. 421, STRINGFELLOW v. CAIN.

Syl. 1 (IX, 753). Appeal from territorial court.

Approved in Shields v. Mongollon etc. Co., 137 Fed. 543, 70 C. C. A. 123, under Civ. Code Alaska, § 504, circuit court of appeals may review decree in action for recovery of interest in mining claim tried to court by writ of error.

Syl. 2 (IX, 753). Appeal—Findings of territorial court.

Approved in De La Rama v. De La Rama, 201 U. S. 309, 50 L. 767, 26 Sup. Ct. 485, sufficiency of evidence on which divorce refused is reviewable by supreme court on appeal from Philippine supreme court under Act of 1902, § 10, where correctness of denial of alimony cannot be determined without passing on weight of such evidence.

Syl. 3 (IX, 754). Townsite occupant's rights pass to widow.

Approved in Shy v. Brockhause, 7 Okl. 41, 54 Pac. 308, townsite occupant may, prior to passing of title from government, maintain eject-

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ment against his tenant; City of Guthrie v. Beamer, 3 Okl. 662, 41 Pac. 650, where lands entered prior to survey for townsite and settlers adopted provisional government, which platted town, and later townsite trustees appointed who approved plat, occupant of lands platted as street devested of interest in lands; Hagar v. Wikoff, 2 Okl. 587, 39 Pac. 283, interest in town lot on public land acquired by occupant being transferable, grantee succeeds to all rights of occupant as against grantor's tenant; Twiggs v. State Board of Land Commrs., 27 Utah, 247, 75 Pac. 731, purchaser of possessory rights of original settler entitled to preferential right to purchase under Rev. St. 1898, § 2337.

(IX, 753.) Miscellaneous. Cited in Sawyer v. Van Hook, 1 Alaska, 110, entry on lot and depositing thereon of building material with intention of erecting dwelling constitutes settlement within townsite act.

99 U. S. 619-624, 25 L. 446, CANNON v. PRATT.

Syl. 3 (IX, 755). Townsite occupant entitled to deed.

Approved in City of Guthrie v. Beamer, 3 Okl. 662, 41 Pac. 650, where lands entered prior to survey for townsite and settlers adopted provisional government, which platted town, and later townsite trustees appointed, who approved plat, occupant of lands platted as street devested of interest in lands.

99 U. S. 624-628, 25 L. 333, COMMISSIONERS v. SELLEW.

Syl. 1 (IX, 755). Mandamus—Abatement by change in officer.

Approved in Utter v. Franklin, 7 Ariz. 306, 64 Pac. 429, mandamus against members of loan commission, naming them individually, not abated by defendants going out of office and being succeeded by others, Territory v. Mayor etc. of Socorro, 12 N. M. 184, 76 Pac. 284, mandamus is properly directed to mayor and city council to compel tax levy; Gouhenour v. Anderson, 35 Tex. Civ. 571, 81 S. W. 105, and Diefenderfer v. State, 14 Wyo. 309, 83 Pac. 592, both arguendo.

99 U. S. 628-635, 25 L. 448, GERMANIA NATIONAL BANK v. CASE.

Syl. 1 (IX, 756). Stockholder's liability of pledgee of stock.

Approved in McDonald v. Dewey, 202 U. S. 520, 524, 535, 536, 537, 538, 50 L. 1133, 1134, 1139, 1140, 26 Sup. Ct. 731, one who, with knowledge of insolvency of national bank, transfers stock to irresponsible vendee to evade liability for bank's debts, is liable for unsatisfied debts existing when transfer made; First Nat. Bank v. Converse, 200 U. S. 438, 50 L. 542, 26 Sup. Ct. 306, want of authority of national bank to subscribe for stock in speculative enterprise is defense to action on stockholder's liability; Merchants' Nat. Bank v. Wehrmann, 202 U. S. 300, 301, 50 L. 1040, 26 Sup. Ct. 613, want of authority of national bank to become absolute owner of transferable

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shares in partnership formed to buy, improve, divide into lots and sell leasehold, is defense to action on liability for firm debts; Morris v. Third Nat. Bank, 142 Fed. 32, national bank which has become owner of notes secured by mortgage may agree with owners of conflicting mortgages to represent all in action to enforce security; McDonald v. Dewey, 134 Fed. 530, 67 C. C. A. 408, colorable assignment of shares to evade stockholder's liability does not affect liability; People's Home Sav. Bank v. Rauer, 2 Cal. App. 447, 84 Pac. 330, upholding suit by corporation against stock transferee to recover unpaid subscription where fact that stock held as pledgee does not appear on books; Fidelity Ins. Co. v. German Sav. Bank, 127 Iowa, 597, 103 N. W. 960, where insurance company received bank stock, certificates of deposit and cash in payment of deposit in insolvent bank, it could not repudiate transaction after its execution because acquisition of stock was ultra vires; Hill v. Shilling, 69 Neb. 157, 95 N. W. 25, savings bank acquiring stock in other corporation in discharge of debt of insolvent debtor is subject to stockholder's liability; Westminster Bank v. New England etc. Works, 73 N. H. 476, 111 Am. St. Rep. 640, 62 Atl. 974, national bank receiving stock as collateral security for loan may take stock in payment of loan.

99 U. S. 635-645, 25 L. 336, NORTHERN TRANSPORTATION CO. v. CHICAGO.

Syl. 1 (IX, 758). What law recognizes is not nuisance.

Approved in Atchison etc. Ry. Co. v. Armstrong, 71 Kan. 370, 80 Pac. 979, holding railroad not liable to one whose residence is permeated by smoke, cinders and gas from engines to such extent as to be injurious to health; Commonwealth v. Packard, 185 Mass. 66, 69 N. E. 1067, under statute punishing storing of petroleum products without license, license obtained pending period that defendant is charged with storing naphtha is defense only to things done in accordance with license after it was obtained; Casey v. Wrought Iron Bridge Co., 114 Mo. App. 61, 89 S. W. 334, where county commissioners contracted for building of bridge according to law, contractor not liable to one injured by its fall; Fisher v. Seaboard Air Line Ry. Co., 102 Va. 369, 46 S E. 383, railroad authorized to operate adjoining plaintiff's property not liable for annoyance from noise and smoke caused by operation of road; Kansas City etc. R. R. Co. v. Wiygul, 82 Miss. 231, 33 So. 967, 61 L. R. A. 578, arguendo.

Syl. 2 (IX, 759). Damages—Liability of city making improvements.

Approved in Blincor v. Choctaw etc. R. R. Co., 16 Okl. 293, 83 Pac. 906, in determining compensation for property taken under eminent domain, damages not limited to realty taken and injured, but may be such as owner actually sustains by appropriation of land; Davis v. Silverton, 47 Or. 177, 82 Pac. 18, where city in grading street ex-

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ercised care and skill and did not encroach on abutting property, injury to such property is damnum absque injuria.

Syl. 4 (IX, 759). Taking for public use.

Approved in Chicago etc. Ry. Co. v. Illinois, 200 U. S. 583, 50 L. 605, 26 Sup. Ct. 341, imposition on railroad of entire cost of removing and rebuilding bridge made necessary by proposed deepening and widening of channel under Illinois drainage act is not taking of property for public use; West Chicago St. R. R. Co. v. Illinois, 201 U. S. 526, 50 L. 853, 26 Sup. Ct. 518, requiring street railway to stand expense of lowering or removing tunnel under river, which, though not obstruction to navigation when constructed, has since become so by reason of increased draft of vessels, does not deny due process; Manigault v. Springs, 199 U. S. 484, 50 L. 280, 26 Sup. Ct. 127, contract obligations of agreement to remove existing dam from navigable stream not impaired by subsequent statute authorizing construction of dam to drain lowlands; De Lucca v. City of North Little Rock, 142 Fed. 600, under Const. Ark., art. 2, § 22, and art. 12, § 9, lot owner cannot restrain city from building viaduct on street in front of lot unless compensation paid where property only damaged incidentally; Sauer v. New York, 180 N. Y. 32, 72 N. E. 580, 70 L. R. A. 717, under Laws 1887, p. 787, c. 576, allowing New York to construct elevated viaduct along street, fee of which is in city, damages to abutting owner by its construction are damnum absque injuria; South Bound R. R. v. Burton, 67 S. C. 521, 46 S. E. 341, where city council authorized operation of railroad in street, abutting owner entitled to damages for depreciation in value of lot.

Syl. 6 (IX, 761). Right of lateral support.

Approved in Farnandis v. Great Northern Ry. Co., 41 Wash. 492, 111 Am. St. Rep. 1031, 84 Pac. 19, where buildings injured by excavations carried on by defendants in land one hundred and twenty feet distant, and weight of buildings did not contribute to sinking of earth, which resulted from excavations, defendants liable for injuries to land and buildings.

(IX, 758.) Miscellaneous. Cited in De Lucca v. City of North Little Rock, 142 Fed. 603, fact that fee of street is in abutting owners does not make construction of viaduct by city on street a taking of property of lot owner.

99 U. S. 645-659, 25 L. 487, CONGRESS ETC. SPRING CO. v. EDGAR.

Syl. 1 (IX, 762). Injuries by dangerous animals.

See 97 Am. St. Rep. 288, note.

Syl. 2 (IX, 762). Expert evidence.

Distinguished in Hamann v. Milwaukee Bridge Co., 127 Wis. 565, 106 N. W. 1086, opinion evidence as to whether particular manner of

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moving six ton machine from car to building was proper was incompetent.

(IX, 762.) Miscellaneous. Cited in Leone v. Kelly, 77 Conn. 571, 60 Atl. 137, complaint in action under Gen. St. 1902, § 4487, making keeper liable for damages done by dog need not allege scienter or other facts dispensing with necessity of scienter.

99 U. S. 660-668, 25 L. 306, EVANSTON v. GUNN.

Syl. 1 (IX, 763). Specific objection waives others.

Approved in Texas & P. Ry. Co. v. Coutourie, 135 Fed. 470, 68 C. C. A. 177, general objection to question asked witness on taking of deposition, as immaterial and irrelevant without stating specific ground, properly overruled.

Syl. 2 (IX, 763). Evidence—Records kept by officers.

Approved in McInerney v. United States, 143 Fed. 736, 737, verified copy of ship's manifest containing list of alien immigrant passengers delivered to inspection officers as report as required by law and preserved in immigration office, is admissible as public record; Scott v. Astoria R. R. Co., 43 Or. 35, 36, 99 Am. St. Rep. 710, 72 Pac. 596, 597, 62 L. R. A. 543, on issue as to maximum daily precipitation during period of years, weather-man may testify from records kept by himself and by predecessor; State v. Hall, 16 S. D. 16, 91 N. W. 328, 65 L. R. A. 151, entries in book regularly kept by postmaster of advices received and money orders drawn are competent evidence of facts therein, though neither statute nor postal regulation requires keeping of such book.

Distinguished in Monarch Mfg. Co. v. Omaha etc. Ry. Co., 127 Iowa, 517, 103 N. W. 495, records of daily observations of temperature and precipitation voluntarily made by railroad agent, and not preserved by requirement of law or railroad nor verified by person making them, are inadmissible to show weather conditions.

Syl. 3 (IX, 763). City's liability—Defective sidewalk.

See 108 Am. St. Rep. 154, 159, note.

Syl. 4 (IX, 763). Defective sidewalk—Means to repair.

Approved in North Jersey etc. Ry. Co. v. Purdy, 142 Fed. 957, applying rule in action by street-car passenger for personal injuries; Heath v. Manson, 147 Cal. 701, 82 Pac. 333, where board of public works had ability to force necessary means from lot owners to repair streets, it is no defense to action for injuries due to defects that board not shown to have means to do repairs. See 103 Am. St. Rep. 264, note.

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99 U. S. 674-676, 25 L. 308, PERRIS v. HEXAMER.

Syl. 1 (IX, 765). Infringement of copyright.

Approved in Bobbs-Merrill Co. v. Straus, 147 Fed. 20, 23, where copies of copyrighted book sold, in which was published notice that retail price was one dollar, that no one authorized to sell for less and that sale for less was infringement, resale at less than one dollar does not give right to injunction; White-Smith Music Pub. Co. v. Apollo Co., 139 Fed. 430, copyright of printed musical composition not infringed by perforated record for use with mechanism to play composition on musical instrument.

Syl. 2 (IX, 765). Copyright of map—Key not included.

Approved in Dennison Mfg. Co. v. Scharf etc. Box Co., 135 Fed. 635, 68 C. C. A. 263, series of numbers used by label manufacturer in catalogues and in connection with name on boxes containing goods to designate style do not constitute trademark.

99 U. S. 686-699, 25 L. 491, BLOCK v. COMMISSIONERS.

Syl. 5 (IX, 767). Conclusiveness of election canvass.

Approved in Barton v. State, 43 Fla. 485, 31 So. 364, in prosecution for selling liquor in prohibition county, defendant cannot contest election for mere irregularities in its conduct where prosecution introduces certified copy of return of canvassers.

99 U. S. 700-769, 25 L. 504, SINKING FUND CASES.

Syl. 1 (IX, 768). Invalidity of statute must be clear.

Approved in Board of Commrs. v. Tollman, 145 Fed. 767, upholding Laws N. C. 1885, p. 439, c. 233, incorporating railroad and authorizing issuance of county aid bonds; Kane v. Erie R. Co., 133 Fed. 684, 68 L. R. A. 788, 67 C. C. A. 653, upholding 87 Ohio Laws, p. 150, § 3, defining who are superior and fellow-servants of railroad employees; Ex parte Kair, 28 Nev. 146, 436, 80 Pac. 466, 82 Pac. 457, upholding Stat. 1903, p. 33, imposing penalty on one working more than eight hours per day in mines, smelters or ore-reduction mills. See 113 Am. St. Rep. 832, note.

Syl. 3 (IX, 768). Government bound by contracts.

Approved in Walker v. United States, 139 Fed. 413, denying right of government to recover moneys paid to marshal where his accounts for services of deputies audited and sum paid and he has gone out of office.

Syl. 5 (IX, 769). Corporate charters—Reserved power to amend.

Approved in Allen v. Ajax Min. Co., 30 Mont. 506, 77 Pac. 50, as to corporation organized between 1889 and 1898, authority conferred on corporation by Laws 1899, p. 113, did not impair obligation of contracts as to stockholder; Wheeling etc. R. R. Co. v. Town of Triadelphia, 58 W. Va. 506, 52 S. E. 507, after declaration of forfeiture

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of street railway, privilege in street by council by repeal of ordinance granting privilege pursuant to reserved power so to do, for cause, on notice, railroad may enjoin removal of tracks if no cause of forfeiture existed.

Syl. 11 (IX, 772). Corporations—Reserved power to regulate.

Approved in McKee v. Chautauqua Assembly, 130 Fed. 540, 65 C. C. A. 8, upholding action of legislature in consolidating corporation with others organized for different purposes and requiring it to assume their liabilities.

Syl. 12 (IX, 773). Legislature cannot exercise judicial power.

Approved in Greenough v. School Com. of Pawtucket, 27 R. I. 428, 62 Atl. 978, denying certiorari to review action of school committee in changing text-books.

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100 U. S. 8-12, 25 L. 536, SOULE v. UNITED STATES.

Syl. 2 (IX, 775). Treasury transcripts as evidence.

Approved in United States v. Pierson, 145 Fed. 817, under Rev. St., § 886, in absence of contrary evidence, in action on Indian agent's bond, duly certified transcript of books and proceedings of Treasury Department establishes prima facie case.

100 U. S. 13-23, 25 L. 538, EX PARTE REED.

Syl. 2 (IX, 776). Departmental regulations.

Approved in United States v. Hardison, 135 Fed. 422, oath taken by distiller's surety with reference to his qualifications is oath taken in case, in which United States law authorizes administration of oath within Rev. St., § 5392, defining perjury; Peters v. United States, 2 Okl. 123, 33 Pac. 1033, false swearing before register of land office in any contest is perjury under Rev. St. U. S., § 5392.

Syl. 4 (IX, 776). Collateral attack on court-martial's judgment.

Approved in United States v. Praeger, 149 Fed. 484, 485, where civilian witness was subpoenaed before general court-martial and refused to answer questions because answers might incriminate him, decision of such court that questions were proper is not conclusive in civil courts on question of witness' contempt in refusing to answer.

Syl. 5 (IX, 777). Habeas corpus—Errors not reviewed.

Approved in In re Burkell, 2 Alaska, 110, where justice of peace incorrectly added "at hard labor" to penalty, habeas corpus does not lie to cure error where hard labor is not in fact being imposed; Ex parte McCown, 139 N. C. 99, 51 S. E. 959, 2 L. R. A. (N. S.) 603,

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applying rule on habeas corpus to determine legality of confinement for contempt.

Syl. 6 (IX, 777). Proceedings without jurisdiction is void.

Approved in Cuyler v. Atlantic etc. R. Co., 131 Fed. 99, where federal court rendered judgment against newspaper publisher for contempt which judgment was void as exceeding court's jurisdiction, publisher entitled to release on habeas corpus; In re Burkell, 2 Alaska, 110, where justice of peace incorrectly added "at hard labor" to penalty, habeas corpus does not lie to cure error where hard labor is not in fact being imposed.

100 U. S. 24-32, 25 L. 531, NEW YORK CENTRAL ETC. R. R. CO. v. FRALOFF.

Syl. 4 (IX, 778). Carrier's limitation for loss of baggage.

Approved in La Bourgogne, 144 Fed. 787, Rev. St., § 4281, respecting liability of vessels "as carriers," does not apply to articles carried by passenger as baggage. See 99 Am. St. Rep. 358, 383, note.

Syl. 7 (IX, 779). Carriers—What is baggage.

Approved in Zazoo etc. R. R. Co. v. Baldwin, 113 Tenn. 211, 81 S. W. 601, holding female's clothes and that of children and miscellaneous ornaments, bank-book and husband's underwear, carried in her trunk were baggage, but household goods were not; Missouri etc. Ry. Co. v. Meek, 33 Tex. Civ. 49, 75 S. W. 318, determining whether tools carried by mechanic were baggage. See 99 Am. St. Rep. 349, 353, note.

Syl. 8 (IX, 780). Carriers—Baggage is question for jury.

See 99 Am. St. Rep. 347, note.

Syl. 9 (IX, 780). Reversal because of amount of verdict.

Approved in Illinois Cent. Ry. Co. v. Davies, 146 Fed. 248, applying rule in action for malicious assault by agent of railroad; Southern Pac. Co. v. Maloney, 136 Fed. 173, 69 C. C. A. 83, applying rule in action against railroad for acts of train porter in stealing passenger's effects.

100 U. S. 33-36, 25 L. 539, UNITED STATES v. HIRSCH.

Syl. 2 (IX, 781). Construction of Revised Statutes.

Approved in United States v. Thomas, 145 Fed. 80, fact that overt act charged to have been committed may constitute substantive offense on part of one or more of accused under statute which they conspired to violate is no defense to prosecution for conspiracy.

Syl. 3 (IX, 781). Conspiracy to defraud of duties—Limitations.

Distinguished in Curley v. United States, 130 Fed. 12, 64 C. C. A. 369, one desiring appointment as letter-carrier who procures another

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to take civil service examination for him and sign name to all papers is guilty of conspiracy to defraud United States within Rev. St., § 5440.

100 U. S. 37-42, 25 L. 541, UNION CON. SILVER MINING CO. v. TAYLOR.

Syl. 5 (IX, 782). Parol transfer of mining claim.

Distinguished in Cascaden v. Dunbar, 2 Alaska, 412, one gratuitously staking mining claim in name of another cannot specifically enforce performance of oral agreement made by principal that he will, after acquisition of title by location, convey interest in claim.

Syl. 6 (IX, 782). Reversal—Admission of irrelevant evidence.

Approved in Brown v. United States, 142 Fed. 4, applying rule in prosecuting for aiding and abetting national bank officer in misapplication of funds by lending same to insolvent corporation of which defendant was president.

100 U. S. 43-47, 25 L. 543, TILLSON v. UNITED STATES.

Syl. 2 (IX, 783). Interest on government claims.

Approved in Watts v. United States, 129 Fed. 226, 227, in suit against United States under special act for recovery of damages for loss of British vessel through collision with naval vessel, court cannot allow interest as part of damages; Trigg Co. v. Bucyrus Co., 104 Va. 88, 51 S. E. 177, where government bought machinery from shipbuilder under system of partial payments and liens filed on machinery, lien claimant cannot recover interest on proceeds in hands of United States.

Distinguished in United States v. Cherokee Nation, 202 U. S. 124, 50 L. 959, 26 Sup. Ct. 588, upholding allowance of interest on account of sums due Cherokees pursuant to agreement for cession of Cherokee Outlet.

100 U. S. 55-61, 25 L. 547, COWELL v. COLORADO SPRINGS CO.

Syl. 1 (IX, 785). Deeds—Condition against sale of liquor.

Approved in Jetter v. Lyon, 70 Neb. 433, 97 N. W. 597, following rule; Wallace v. Smith, 113 Ky. 266, 68 S. W. 132, upholding provision in will that land devised to infant shall not be sold until he is thirty-five years old.

Syl. 2 (IX, 786). Ejectment—Breach of condition in deed.

Approved in Griswold v. Minneapolis etc. Ry. Co., 12 N. D. 444, 102 Am. St. Rep. 572, 97 N. W. 541, applying rule where land owner conveyed to railroad for right of way on condition contained in deed that if grantee failed to erect depot at point named land should revert; Lewiston Water etc. Co. v. Brown, 42 Wash. 557, 85 Pac. 48, under Bal. Code, § 5500, grantor in deed may recover possession for breach of condition subsequent without prior demand for posses-

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sion; Oklahoma City v. McMaster, 12 Okl. 584, 73 Pac. 1016, judgment against townsite trustees is binding against city.

Syl. 3 (IX, 786). Business by foreign corporations.

Approved in United States Fidelity etc. Co. v. Linehan, 73 N. H. 42, 58 Atl. 957, under Pub. St. 1901, c. 169, § 6, insurance commissioner cannot refuse license to foreign company because it is doing surety as well as burglary insurance business, and he believes it unsafe for company to carry on two kinds of business.

Syl. 5 (IX, 787). Necessity of land for corporate business.

Approved in Watkins v. Iowa Cent. Ry. Co., 123 Iowa, 400, 98 N. W. 914, reaffirming rule; Iowa etc. Min. Co. v. United States etc. Guaranty Co., 146 Fed. 440, where foreign corporation was acting as corporation in Iowa at time it made contract, it is no defense to action thereon that it has not complied with Iowa laws relating to foreign corporations.

Distinguished in Myatt v. Ponca City Land etc. Co., 14 Okl. 211, 213, 78 Pac. 191, 192, 68 L. R. A. 810, where, in action by foreign corporation, it is attempting to acquire title to land vested in individual, latter may, under Oklahoma statute, deny corporate capacity as defense.

(IX, 785.) Miscellaneous. Cited in Sioux City v. Chicago etc. Ry. Co., 129 Iowa, 704, 106 N. W. 187, title to reclaimed land goes with fee to land to which it is annexed.

100 U. S. 61-71, 25 L. 563, AMERICAN EMIGRANT CO. v. COUNTY OF ADAMS.

Syl. 3 (IX, 789). Grant by state of swamp lands.

Approved in State v. Bryan, 50 Fla. 373, 39 So. 954, Laws 1905, c. 5384, does not conflict with Act Cong. 1862, c. 130, donating to state fund for establishment of college, because of provision of c. 5384, relating to teaching of military tactics.

100 U. S. 78-81, 25 L. 550, KANSAS PACIFIC RY. CO. v. TWOMBLY.

Syl. 3 (IX, 781). Repeal of statute pending appeal.

Cited in Northern Pac. Ry. Co. v. Ely, 197 U. S. 8, 49 L. 642, 25 Sup. Ct. 302, arguendo.

100 U. S. 82-99, 25 L. 550, TRADEMARK CASES.

Syl. 1 (IX, 792). Property rights in trademarks.

Approved in Baker v. Puritan Pure Food Co., 139 Fed. 681, enjoining infringement of trademark where infringing picture is not close imitation but merely of same generic character; Woodcock v. Guy, 33 Wash. 239, 74 Pac. 359, where, in suit to restrain infringement of nonregistered trademark, complaint simply asked protection

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in exclusive use of word and failed to charge that defendant had simulated plaintiff's labels so as to deceive public or that use of word was fraudulent, it is insufficient.

Syl. 3 (IX, 793). Commerce—Congressional law must regulate.

Approved in Howard v. Illinois Cent. R. Co., 148 Fed. 1004, and Brooks v. Southern Pac. Co., 148 Fed. 992, 994, both holding void employer's liability act of 1906; United States v. Scott, 148 Fed. 433, 435, holding void act of 1898, prohibiting interstate carriers from discriminating against union labor employees.

Syl. 4 (IX, 793). Statutes valid in part.

Approved in United States v. Ju Toy, 198 U. S. 262, 49 L. 1044, 25 Sup. Ct. 644, decision of Secretary of Commerce affirming denial of immigration officers of right of Chinese to enter is conclusive on habeas corpus, though citizenship is claimed as right to enter; Brooks v. Southern Pac. Co., 148 Fed. 994, 995, holding void employer's liability act of 1906; United States v. Scott, 148 Fed. 436, holding void act of 1898, prohibiting interstate carriers from discriminating against union labor employees; Cella Com. Co. v. Bohlinger, 147 Fed. 423, 424, holding void Arkansas act of 1901, authorizing personal judgment against foreign corporation on cause of action in favor of resident on service on state auditor; McDonald v. Southern Exp. Co., 134 Fed. 288, holding void S. C. act of 1904, prohibiting shipment of shad outside of state.

Syl. 5 (IX, 794). Commerce—Protection of trademarks.

Approved in United States v. Scott, 148 Fed. 433, holding void act of 1898, prohibiting interstate carriers from discriminating against union labor employees; Selchow v. Chaffee etc. Mfg. Co., 132 Fed. 998, registration under act of 1870, of word "Parcheesi," for Indian game, is good only as notice of claim to word; Leschen etc. Rope Co. v. Broderick etc. Rope Co., 201 U. S. 169, 50 L. 711, 26 Sup. Ct. 425, arguendo.

(IX, 792.) Miscellaneous. Cited in Smiley v. Kansas, 196 U. S. 455, 49 L. 550, 25 Sup. Ct. 289.

100 U. S. 100-104, 25 L. 569, HURT v. HOLLINGSWORTH.

Syl. 1 (IX, 794). Blending of legal and equitable remedies.

Approved in Union Stockyards Co. v. Nashville Pack. Co., 140 Fed. 706, where case removed from state court, which could grant legal or equitable relief, and plaintiff electing to proceed in equity makes no case for equitable relief, federal court cannot award damages at law; Hatcher v. Hendrie etc. Supply Co., 133 Fed. 271, 68 C. C. A. 19, where action to enforce mechanic's lien and to recover debt which it secures, in which plaintiff also obtained and served attachment, which was removed and proceeded in federal court on original pleadings as equity suit, money judgment is not collaterally attackable; Lockman v. Lang, 132 Fed. 3, where, in proceedings by appeal and by writ of error

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to review same rulings, errors are same in both proceedings, filing of single assignment of errors is sufficient.

(IX, 794.) Miscellaneous. Cited in Duncan v. Ferguson-M'Kinney Dry Goods Co., 150 Fed. 272, determining what constitutes abandonment of homestead.

100 U. S. 104-110, 25 L. 527, RICKER v. POWELL.

Syl. 1 (IX, 795). Bill of review—Newly discovered evidence.

Approved in Safe Deposit etc. Co. v. Gittings, 102 Md. 463, 62 Atl. 1033, 4 L. R. A. (N. S.) 865, applying rule where wife's executor filed bill for accounting for property transferred to husband and he claimed it was gift and decree rendered for executor.

Syl. 3 (IX, 796). Bill of review—Performance of decree.

Approved in Westinghouse Electric etc. Co. v. Stanley Inst. Co., 138 Fed. 826, where it is claimed that patent in suit expired pending appeal because of expiration of foreign patent for same invention, defendant, failing to present facts relating thereto before hearing on merits in appellate court, denied leave to file supplemental bill in nature of bill of review to present question after determination on merits.

100 U. S. 110-112, 25 L. 547, GLENDALE ELASTIC FABRICS CO. v. SMITH.

Syl. 1 (IX, 796). Expiration of patent pending infringement suit.

Approved in Western Coal etc. Co. v. Petty, 132 Fed. 606, judgment of dismissal denying right to costs in action at law is reviewable on error.

Distinguished in Nutter v. Brown, 58 W. Va. 240, 52 S. E. 90, 1 L. R. A. (N. S.) 1083, decree allowing expenses and compensation of receiver is appealable.

100 U. S. 113-119, 25 L. 587, LANSDALE v. DANIELS.

Syl. 1 (IX, 797). Settler's declaration before survey returned.

Approved in Eastern Oregon Land Co. v. Brosnan, 147 Fed. 810, 811, where state aid grant excepted lands reserved, complaint in action by one claiming under grant to recover lands subsequently entered by and patented to defendant under land laws must affirmatively show that at time grant became fixed in place land was not within exception; Russian-American Packing Co. v. United States, 199 U. S. 572, 50 L. 315, 26 Sup. Ct. 157, arguendo.

100 U. S. 124-138, 25 L. 554, HATCH v. STANDARD OIL CO.

Syl. 4 (IX, 799). Sales—Presumption as to immediate delivery.

Approved in Mason v. Lievre, 145 Cal. 522, 78 Pac. 1043, where vendor complied with his part of agreement and it only remained for vendee to designate mode of transfer of stock sold and stock tendered within reasonable time, vendee could not revoke contract on ground that stock did not accompany draft for purchase money.

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Syl. 5 (IX, 799). Sales—Place of delivery.

Approved in Salmon v. Helena Box Co., 147 Fed. 411, following rule.

100 U. S. 147-148, 25 L. 591, BALLARD PAVING CO. v. MULFORD.

Syl. 2 (IX, 802). Uniting interest to give jurisdiction.

Approved in People's Nat. Bank v. Saville, 201 U. S. 641, 50 L. 901, 26 Sup. Ct. 760, following rule.

100 U. S. 149-153, 25 L. 573, CLARK v. FREEDMAN'S SAV. & TRUST CO.

Syl. 1 (IX, 802). Foreclosure sale to officer of corporation.

See 103 Am. St. Rep. 57, note.

100 U. S. 153-157, 25 L. 591, HINCKLEY v. GILMAN ETC. R. R. CO.

Syl. 4 (IX, 803). Receiver chargeable with interest.

Approved in Beugnot v. Tremoulet, 111 La. 18, 35 So. 368, one intrusted by mother of minor with interests and property of minor, who confuses with own funds of minor in local banks, checking against same at will, is chargeable with interest.

100 U. S. 158-195, 25 L. 632, DOW v. JOHNSON.

Syl. 2 (IX, 803). Jurisdiction over offenses in enemy's country.

Approved in Hamilton v. McClaughry, 136 Fed. 449, Boxer uprising in China in 1900 constituted time of war within fifty-eighth article of war relating to court-martials.

100 U. S. 195-208, 25 L. 621, NATIONAL SAVINGS BANK v. WARD.

Syl. 5 (IX, 805). Liability of attorney to third party.

Approved in Western Union Tel. Co. v. Schriver, 141 Fed. 542, undisclosed principal of addressee of message cannot recover damages of telegraph company for negligence of operator in sending unauthorized message; Galbraith v. Illinois Steel Co., 133 Fed. 487, 2 L. R. A. (N. S.) 799, 66 C. C. A. 359, holding owner of building cannot recover of subcontractor for negligent construction; Southern Oil Co. v. Church, 32 Tex. Civ. 327, 74 S. W. 798, where defendant furnished independent contractor derrick with which to do work, defendant not liable to contractor's servant for injuries caused by defect in derrick. See 100 Am. St. Rep. 203, note.

Syl. 6 (IX, 806). Evidence of usage.

Approved in Lillard v. Kentucky Distilleries etc. Co., 134 Fed. 182, 67 C. C. A. 74, evidence of custom is inadmissible to show contract to deliver distillery slop at feeding lot supplied by distiller contemplated lot should have pens equipped with pipes and troughs.

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100 U. S. 213-226, 25 L. 612, HOUGH v. TEXAS & PACIFIC RAILWAY CO.

Syl. 1 (IX, 807). Injuries caused by fellow-servant.

Approved in Schwarzschild v. Weeks, 72 Kan. 195, 83 Pac. 408, 4 L. R. A. (N. S.) 515, holding packing-house owner liable for injuries to employee caused by negligent manipulation of beef hoist by inexperienced hand; Neeley v. Southwestern etc. Oil Co., 13 Okl. 373, 75 Pac. 543, 64 L. R. A. 145, applying rule where laborer employed in cotton-seed oil factory injured by defects in belt; Virginia Portland Cement Co. v. Luck, 103 Va. 445, 49 S. E. 583, determining liability of master where servant injured by foot passing into opening in floor in which he had laid board which fitted opening; Fulton v. Crosby-Beckley Co., 57 W. Va. 95, 49 S. E. 1014, applying rule where railroad employee injured through defects in bridge; Richards v. Riverside Ironworks, 56 W. Va. 524, 49 S. E. 442, holding master liable for injuries caused by defects in scaffolding.

Syl. 2 (IX, 808). Care required of master—Suitable machinery.

Approved in Shandrew v. Chicago etc. Ry. Co., 142 Fed. 323, upholding instruction that railroad not liable for injuries caused by bursting of defective air-brake hose, unless it failed to exercise ordinary care to provide proper hose and keep it in good condition; Southern Pac. Co. v. Hetzei, 135 Fed. 284, 68 C. C. A. 26, determining degree of care required of railroad in selecting engineer and in supervising his subsequent conduct; Hawley v. Chicago etc. Ry. Co., 133 Fed. 151, 66 C. C. A. 216, holding switchman killed by roof projecting over yard tracks while setting brakes on car did not assume risk; Rinciotti v. O'Brien Contracting Co., 77 Conn. 620, 60 Atl. 116, 69 L. R. A. 936, where master furnished servants with derrick to facilitate work, he is bound to provide and maintain reasonably safe one; Johnson v. Union Pac. Coal Co., 28 Utah, 64, 76 Pac. 1095, 67 L. R. A. 506, determining master's liability for injuries to servant while working in mine shaft by slipping of rail from top of car on which rails being conveyed; dissenting opinion in Northern Pac. Ry. Co. v. Dixon, 194 U. S. 351, 48 L. 1012, 24 Sup. Ct. 683, majority holding negligence of local railroad telegraph operator in reporting to train despatcher movement of trains past station, resulting in death of fireman, is negligence of fellow-servant; dissenting opinion in The Tresco, 134 Fed. 823, 67 C. C. A. 465, majority holding where stevedore injured by pulling out of splicing of cable and before unloading begun only visual inspection made and it appeared that if tar twine covering removed, defectiveness of splice would have been known, ship guilty of negligence. See 98 Am. St. Rep. 291, 301, note.

Distinguished in Floyd v. Colorado etc. Iron Co., 18 Colo. App. 156, 70 Pac. 453, where superintendent told plaintiff he would send man with block and tackle which plaintiff asked for to replace heavy machine and ordered him to assist man, and when latter arrived he

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said plaintiff could do work alone, plaintiff assumed risk by doing work without tackle.

Syl. 3 (IX, 811). Servant assumes risks of employment.

Approved in Chambers v. American Tin Plate Co., 129 Fed. 564, 64 C. C. A. 129, where defendant employed boss carpenter and his servants to build scaffolding for bricklayers and one of latter injured by reason of defects in scaffolding, defendant liable; Tanner v. Hitch Lumber Co., 140 N. C. 479, 53 S. E. 288, where master undertook to transport laborers to and from quarters on log cars, negligent act of servant in loading cars resulting in injury to laborer makes master liable.

Syl. 5 (IX, 812). Who are fellow-servants.

Approved in Merrill v. Oregon Short Line R. Co., 29 Utah, 278, 279, 110 Am. St. Rep. 695, 81 Pac. 88, holding railroad liable for death of car-repairer caused by kicking string of cars against car between which repairer working; dissenting opinion in Northern Pac. Ry. Co. v. Dixon, 194 U. S. 353, 48 L. 1013, 24 Sup. Ct. 683, majority holding negligence of local railway telegraph operator in reporting to train despatcher movement of trains past station, resulting in death of fireman, is negligence of fellow-servant.

Syl. 6 (IX, 814). Contributory negligence—Complaint of servant of defects.

Approved in Mueller v. La Prelle Shoe Co., 109 Mo. App. 518, 84 S. W. 1014, and Dunkerly v. Webendorfer Mach. Co., 71 N. J. L. 62, 58 Atl. 94, both following rule; Baker v. Philadelphia etc. Ry. Co., 149 Fed. 887, in action for death of railroad engineer burden is on defendant to show deceased was negligent and that negligence contributed to injury; Crookston Lumber Co. v. Boutin, 149 Fed. 683, where sawmill employee notified employer of defective condition of log carriage and latter promised to repair it, former did not assume risks by remaining at work; Armour v. Carlas, 142 Fed. 722, upholding refusal to dismiss action where plaintiff started to drive carriage across street having twenty-eight foot driveway in front of defendant's wagon, which struck carriage; Burch v. Southern Pac. Co., 140 Fed. 271, complaint in action by servant for injury caused by defective appliance is not demurrable because in alleging promise by master to repair no definite time stated within which defendant promised to repair; Cincinnati etc. Ry. Co. v. Robertson, 139 Fed. 523, 524, applying rule where locomotive engineer complained of absence of shields about oil tube and foreman promised to repair; Anderson v. Seropian, 147 Cal. 213, 81 Pac. 525, applying rule where accident happened on same day promise to repair was made; Foster v. Chicago etc. Ry. Co., 127 Iowa, 89, 102 N. W. 424, applying rule where foreman promised section-hand to repair brakes on handcar; Atchison etc. Ry. Co. v. Sledge, 68 Kan. 326, 74 Pac. 1113, applying rule where switchman injured through defective hand rail on engine, which master mechanic had promised to repair;

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Maryland Steel Co. v. Engleman, 101 Md. 684, 61 Atl. 317, where servant requested foreman to furnish new belt for machine because of defects in old belt, and latter promised on two occasions to do so, servant not contributorily negligent for remaining at work; Fouts v. Swift, 113 Mo. App. 532, 88 S. W. 168, applying rule where plaintiff warned defendant's foreman of danger of unprotected electric fan and received assurance that he would attend to it; Dowd v. Erie R. R. Co., 70 N. J. L. 455, 57 Atl. 250, whether lapse of sixteen days after promise to repair defects is reasonable time is for jury; Virginia etc. Wheel Co. v. Harris, 103 Va. 713, 49 S. E. 993, upholding sufficiency of declaration for injuries charging defendant informed of defective condition of appliance and promised to repair it but requested plaintiff to continue work, and failed to fix it; Heathcock v. Milwaukee etc. Min. Co., 128 Wis. 54, 107 N. W. 466, where employee working around mining shaft threatened to quit unless mouth of shaft guarded but after threat continued to work for seven days during which no steps taken to guard shaft, he assumed risk. See 98 Am. St. Rep. 315, note.

Distinguished in Begenish v. Gates, 2 Alaska, 514, 515, where bucketman in mine notified foreman of defect in hoisting apparatus but continued to work, and instead of stopping engine to fix rope attempted to fix it while running, and hand caught, he was negligent; Neeley v. Southwestern etc. Oil Co., 13 Okl. 380, 75 Pac. 545, 64 L. R. A. 145, where employer, after promise to repair, revokes promise, employee not warranted in continuing service.

Syl. 7 (IX, 817). Following state decisions.

Approved in Yeates v. Illinois Central R. R. Co., 137 Fed. 945, lessor of railroad track is not liable for negligence of lessee in operating trains on such tracks.

100 U. S. 226-234, 25 L. 577, CRAIG v. SMITH.

Syl. 2 (IX, 818). Bill of review—Newly discovered evidence.

Approved in Safe Deposit etc. Co. v. Gittings, 102 Md. 464, 62 Atl. 1033, 4 L. R. A. (N. S.) 865, where wife's executor filed bill for accounting for property transferred to husband and he defended on ground that it was gift, and decree rendered for executor, it was discretionary to refuse leave to file bill of review on ground of newly discovered evidence.

100 U. S. 239-250, 25 L. 580, OATES v. NATIONAL BANK.

Syl. 2 (IX, 818). Liberal construction of statutes.

Approved in United States v. Jackson, 143 Fed. 787, act of June 21, 1902, relating to good time credits, does not apply to prisoners sentenced before it took effect.

Syl. 3 (IX, 819). Following state decisions—Commercial law.

Approved in Birket v. Elward, 68 Kan. 303, 74 Pac. 1102, 64 L. R. A. 568, indorsee of note taken as collateral security for pre-existing debt is holder for value and protected against claim of payment made to original payee.

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Syl. 4 (IX, 820). Transference of note as security.

Approved in Tollman v. Quincy, 129 Fed. 975, where defendant's note transferred to plaintiff before maturity in settlement of pending suit, it is no defense that note was for accommodation or that it had been diverted.

100 U. S. 251-257, 25 L. 626, TRENOUTH v. SAN FRANCISCO.

Syl. 3 (IX, 822). Trespassers in possession—Pueblo lands.

Approved in Bowden v. San Francisco, 199 U. S. 600, 50 L. 328, 26 Sup. Ct. 748, following rule.

Syl. 4 (IX, 822). No pre-emption founded on trespass.

Approved in Clipper Min. Co. v. Eli Min. etc. Co., 194 U. S. 230, 231, 48 L. 951, 952, 24 Sup. Ct. 632, entry on prior valid placer location for purpose of prospecting for unknown lodes, when made against will of placer locators, initiates no title to lode claims located within boundaries of placer claim; Smith v. Love, 49 Fla. 242, 38 So. 380, holding plaintiff trustee holding legal title to land in controversy in trust for defendant.

Syl. 5 (IX, 823). Pre-emption pending confirmation Mexican grant.

Approved in Wallace v. Adams, 143 Fed. 724, act of 1902, creating citizenship court empowered to review final judgments of United States courts under 29 Stat. 339, which had been affirmed by supreme court, was valid as against successful litigants who had not procured allotments prior to its passage.

100 U. S. 257-302, 25 L. 648, TENNESSEE v. DAVIS.

Syl. 1 (IX, 823). Removal—Petition showing federal question.

Approved in West Virginia v. Laing, 133 Fed. 889, 891, 66 C. C. A. 617, upholding power of federal court to discharge on habeas corpus member of marshal's posse indicted for killing man sought to be arrested on federal warrant; Virginia v. Felts, 133 Fed. 89, 96, reciting mode of putting in issue truth of allegations in removal petition.

Syl. 2 (IX, 823). Removals—Prosecutions against federal officers.

Approved in Kentucky v. Powers, 139 Fed. 475, upholding removal where one accused of murder in state court had been thrice convicted and each conviction reversed, and objections to rulings refusing testimony to show discrimination in selection of jurors overruled, and under state law such rulings not reviewable.

Syl. 3 (IX, 824). Removal—When federal question arises.

Approved in Ex parte Riggins, 134 Fed. 422, member of mob which takes negro charged with crime from sheriff and lynch him is indictable for conspiracy under Rev. St., §§ 5508, 5509; Anthony v. Burrow, 129 Fed. 787, denying jurisdiction over question as to whether county is lawfully included in congressional district where it was placed by act of state legislature.

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Syl. 5 (IX, 825). Removal of prosecution against federal officer.

Approved in Kentucky v. Powers, 139 Fed. 454, 455, upholding removal where one accused of murder in state court had been thrice convicted and each conviction reversed and objections to rulings refusing testimony to show discrimination in selection of jurors overruled, and under state law such rulings not reviewable.

(IX, 823.) Miscellaneous. Cited in Trafton v. United States, 147 Fed. 514, quaere, whether federal courts will recognize state criminal procedure statute passed since federal judiciary act; Virginia v. Felts, 133 Fed. 91, cited to dissenting opinion.

100 U. S. 303-312, 25 L. 664, STAUDER v. WEST VIRGINIA.

Syl. 1 (IX, 826). Civil rights—Rights of negroes.

Approved in Ex parte Riggins, 134 Fed. 422, member of mob which takes negro charged with crime from sheriff and lynches him is indictable for conspiracy under Rev. St., §§ 5508, 5509; Georgia R. R. etc. Co. v. Wright, 125 Ga. 603, 54 S. E. 58, failure of legislature to impose tax on shares of domestic corporations where property of such corporations is taxed in hands of company, while imposing tax on shares in foreign corporations, is not denial of equal protection as to owners of shares in foreign corporations.

Syl. 2 (IX, 826). Exclusion of negroes from juries.

Approved in Martin v. Texas, 200 U. S. 319, 50 L. 498, 26 Sup. Ct. 338, discrimination against negroes because of race in selection of jurors not shown by verified motions to quash indictment and jury panel where no evidence offered to establish facts stated in motion; Kentucky v. Powers, 139 Fed. 462, 480, upholding removal where one accused of murder in state court had been thrice convicted and each conviction reversed and objections to rulings refusing testimony to show discrimination in selection of jurors overruled, and under state law such rulings not reviewable; Ex parte Powers, 129 Fed. 990, arguendo.

Syl. 3 (IX, 827). Fourteenth amendment—Discriminations against negroes.

Approved in Pope v. Williams, 98 Md. 71, 103 Am. St. Rep. 379, 56 Atl. 545, 66 L. R. A. 398, upholding act of 1902, prohibiting person coming from another state from registering as voter until one year after declaration of intention made by record in county clerk's office; State v. Weber, 96 Minn. 430, 105 N. W. 493, upholding Const., art. 7, § 1, limiting right of suffrage, as respects naturalized citizens, to such as are admitted to citizenship three months prior to election at which they tender vote.

Syl. 4 (IX, 828). Protection of constitutional rights.

Approved in Kentucky v. Powers, 201 U. S. 27, 50 L. 645, 26 Sup. Ct. 387, denial of federal equal civil rights to accused, in summoning or impaneling jurors, does not authorize removal of criminal prosecution under Rev. St., § 641; New Jersey v. Corrigan, 139 Fed. 761, 765, re-

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manding case where New Jersey statute relative to qualifications of grand jurors did not deny equal civil rights; Kentucky v. Powers, 139 Fed. 454, 456, 474, 486, 994, upholding removal where one accused of murder in state court had been thrice convicted and each conviction reversed, and objections to rulings refusing testimony to show discrimination in selection of jurors overruled, and under state law such rulings not reviewable; Scott v. Kinney, 137 Fed. 1011, where failure to obtain trial of action in state court resulted from failure to secure attorney or because opponent secured continuances of trial against objections, cause was not removable under Rev. St., § 641.

(IX, 826). Miscellaneous. Cited in Flood v. News & Courier Co., 71 S. C. 117, 50 S. E. 639, holding it libelous per se to publish of white man that he is colored.

100 U. S. 313-338, 25 L. 667, VIRGINIA v. RIVES.

Syl. 2 (IX, 829). Fourteenth amendment—Discriminations.

Approved in Iowa etc. Ins. Assn. v. Gilbertson, 129 Iowa, 669, 106 N. W. 157, Rev. St. U. S., § 1977, does not affect validity of Code Supp. 1902, § 1333d, requiring insurance companies, except mutuals, not organized for profit to pay tax of percentage of gross receipts.

Syl. 3 (IX, 830). Fourteenth amendment refers to state action.

Approved in Moyer v. Peabody, 148 Fed. 874, federal court has no jurisdiction over action against state officers for damages done through use of militia called out by governor to suppress insurrection where power not alleged to have been wantonly abused; Kentucky v. Powers, 139 Fed. 477, 478, 479, upholding removal of criminal case where accused discriminated against in selection of jury; Glucose Ref. Co. v. Chicago, 138 Fed. 211, federal jurisdiction in suit to enjoin enforcement of city ordinance not predicable on allegation that in passing ordinance city exceeded charter powers; St. Louis etc. Ry. Co. v. Davis, 132 Fed. 637, denying federal jurisdiction over suit to enjoin state board from certifying assessment of railroad property for taxation at higher percentage of actual value than property of other classes, contrary to state law.

Syl. 4 (IX, 830). Equal rights—Removal of prosecutions.

Approved in Kentucky v. Powers, 201 U. S. 28, 50 L. 646, 26 Sup. Ct. 387, denial, in summoning or impaneling jurors, of federal civil rights, does not, unless authorized by state law, give right to remove criminal prosecution to federal court under Rev. St., § 641; Barney v. New York, 193 U. S. 438, 48 L. 740, 24 Sup. Ct. 502, averment in bill to enjoin construction of railroad tunnel under street that construction will deprive abutting owner of property without due process does not give federal jurisdiction where bill proceeds on theory that action sought to be enjoined was forbidden by state law; New Jersey v. Corrigan, 139 Fed. 761, construing New Jersey statute relative to qualifications of grand jurors; Kentucky v. Powers, 139 Fed. 454, 455, 481, 483, 485, upholding federal jurisdiction on removal where one indicted in state court for mur-

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der discriminated against in selection of jury; Scott v. Kinney, 137 Fed. 1011, where failure to obtain trial of action in state court resulted from failure to secure attorney or because opponent secured continuances of trial against objection, cause not removable under Rev. St., § 641.

Syl. 5 (IX, 831). Removal petition—Denial of equal rights.

Approved in Kentucky v. Powers, 139 Fed. 480, upholding removal of criminal case where accused discriminated against in selection of jury.

Syl. 6 (IX, 831). Removal—Exclusion of negro jurors.

Approved in Georgia R. R. etc. Co. v. Wright, 125 Ga. 603, 54 S. E. 58, failure of legislature to impose tax on shares of domestic corporation where property of such corporations is taxed in hands of company, while imposing tax on shares in foreign corporations, is not denial of equal protection as to owners of shares in foreign corporation.

Syl. 7 (IX, 831). Negro defendant—Trial by negro jurors.

Approved in Martin v. Texas, 200 U. S. 321, 50 L. 499, 26 Sup. Ct. 338, discrimination against negroes because of race in selection of jurors not shown by verified motions to quash indictment and jury panel, charging such discrimination, where no evidence offered to establish facts alleged; Kentucky v. Powers, 139 Fed. 463, upholding removal of criminal case where accused discriminated against in selection of jury;

Syl. 8 (IX, 831). Mandamus to control judicial discretion.

See 98 Am. St. Rep. 890, note.

Syl. 9 (IX, 831). Mandamus where discretion abused.

Approved in Kentucky v. Powers, 139 Fed. 493, upholding removal of criminal case where accused discriminated against in selection of jury; Barber Asphalt Pav. Co. v. Morris, 132 Fed. 954, 67 L. R. A. 761, 66 C. C. A. 55, granting mandamus to compel circuit judge to vacate order staying action in circuit court on claim against city pending appeals to state court; In re Dowd, 133 Fed. 751, arguendo.

Distinguished in Smith v. Connor, 98 Tex. 438, 84 S. W. 817, refusing mandamus to require justices of court of civil appeals to certify for decision question decided by that court.

(IX, 828.) Miscellaneous. Cited in Cassett v. Mitchell Coal & Coke Co., 150 Fed. 40; Gay v. Thomas, 5 Okl. 27, 46 Pac. 586, equal protection does not make necessary same local regulations.

100 U. S. 339-370, 25 L. 667, EX PARTE VIRGINIA.

Syl. 2 (IX, 832). Habeas corpus—Inquiry into judgment.

Approved in Jamison v. Wimbish, 130 Fed. 361, granting habeas corpus where one sentenced by police judge for petty offense to seven months on chain-gang, where he was put in stripes and made to wear irons.

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Syl. 3 (IX, 833). Equal rights to negroes.

Approved in Ex parte Riggins, 134 Fed. 406, member of mob which takes negro charged with crime from sheriff and lynches him is indictable for conspiracy under Rev. St., §§ 5508, 5509.

Syl. 4 (IX, 834). Officer violating fourteenth amendment.

Approved in Douglas Park Jockey Club v. Grainger, 146 Fed. 417, upholding jurisdiction over suit to enjoin state officers enforcing Kentucky act of 1906, regulating racing, on ground that their action violates property rights under federal constitution; Ex parte Riggins, 134 Fed. 409, 420, member of mob which takes negro charged with crime from sheriff and lynches him is indictable for conspiracy under Rev. St., §§ 5508, 5509; Georgia R. R. etc. Co. v. Wright, 125 Ga. 603, 54 S. E. 58, failure of legislature to impose tax on shares of domestic corporation, where property of such corporations is taxed in hands of company while imposing tax on shares in foreign corporation, is not denial of equal protection as to owners of shares in foreign corporations; McKinster v. Sager, 163 Ind. 680, 106 Am. St. Rep. 268, 72 N. E. 858, 68 L. R. A. 273; and Sellers v. Hayes, 163 Ind. 434, 72 N. E. 123, both holding void statute declaring sales of stock of merchandise otherwise than in course of trade void as to creditors having purchase money claim, unless certain conditions observed; State ex rel. Galle v. New Orleans, 113 La. 377, 36 So. 1001, 67 L. R. A. 70, under New Orleans charter giving council discretion with respect to granting barroom licenses, council cannot arbitrarily refuse license.

Distinguished in Owensboro Waterworks Co. v. Owensboro, 200 U. S. 45, 50 L. 364, 26 Sup. Ct. 249, denying federal jurisdiction over suit to enjoin threatened diversion by city of funds which it had collected for specified object, on theory that failure of duty on part of city will increase taxation; Barney v. New York, 193 U. S. 440, 48 L. 741, 24 Sup. Ct. 502, averment in bill to enjoin construction of railroad tunnel under city street that abutting owner is deprived of property without due process does not give federal court jurisdiction where bill proceeds on theory that action sought to be enjoined, was forbidden by state law; St. Louis etc. Ry. Co. v. Davis, 132 Fed. 635, 638, denying federal jurisdiction over suit to enjoin state board from certifying assessment of railroad property for taxation at higher percentage of actual value than other classes of property, contrary to state law.

Syl. 6 (IX, 835). Race discrimination in juries.

Approved in Kentucky v. Powers, 139 Fed. 454, upholding removal of prosecution where accused discriminated against in selection of jurors.

Syl. 7 (IX, 835). Fourteenth amendment—Civil rights.

Approved in Kentucky v. Powers, 139 Fed. 455, upholding removal of criminal prosecution where accused discriminated against in selection of jurors.

(IX, 832.) Miscellaneous. Cited in Gay v. Thomas, 5 Okl. 27, 46 Pac. 586, equal protection does not make necessary same local regula-

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tions; O'Neil v. State, 115 Tenn. 444, 90 S. W. 632, upholding Acts 1901, p. 115, prohibiting practice of medicine without license.

100 U. S. 371-399, 25 L. 717, EX PARTE SIEBOLD.

Syl. 1 (IX, 836). Habeas corpus—Conviction under void act.

Approved in Jamison v. Wimbish, 130 Fed. 361, granting habeas corpus where one sentenced by police judge for petty offense to seven months in chain gang where he was compelled to wear stripes and leg irons.

Syl. 2 (IX, 837). Habeas corpus—Sentence by inferior court.

Approved in Ex parte Moran, 144 Fed. 601, upholding jurisdiction of circuit court of appeals to inquire into power of Oklahoma court to imprison one convicted of capital crime.

Syl. 3 (IX, 837). Habeas corpus not writ of error.

Approved in Ex parte Moran, 144 Fed. 604, denying right to review on habeas corpus validity of selection of grand jurors by territorial court.

Syl. 4 (IX, 838). Habeas corpus—Want of jurisdiction.

Approved in Ex parte Robinson, 144 Fed. 836, where circuit court had no jurisdiction of subject matter of suit, adjudication that one was guilty of contempt in violating injunction issued therein is attackable on habeas corpus; In re Burkell, 2 Alaska, 109, habeas corpus does not lie where justice of peace added "at hard labor" to penalty, where hard labor not in fact being imposed.

Syl. 5 (IX, 838). Habeas corpus—Review of jurisdiction.

Approved in dissenting opinion in Rush v. Buckley, 100 Me. 338, 61 Atl. 781, 70 L. R. A. 464, majority holding judge issuing warrant and officer serving same not liable civilly, though ordinance under which arrest made was invalid.

Syl. 10 (IX, 840). Act offense against state and government.

Approved in Ex parte Riggins, 134 Fed. 411, member of mob which took negro accused of crime from sheriff and lynched him may be indicted for conspiracy under Rev. St., §§ 5508, 5509.

(IX, 836.) Miscellaneous. Cited in Hooks v. Aldridge, 145 Fed. 870.

100 U. S. 399-422, 25 L. 715, EX PARTE CLARKE.

(IX, 842.) Miscellaneous. Cited in Cuyler v. Atlantic & N. C. R. Co., 131 Fed. 99, releasing on habeas corpus publisher of newspaper committed for contempt of federal court consisting of editorial criticising official conduct and integrity of court.

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100 U. S. 434-444, 25 L. 743, GUY v. BALTIMORE.

Syl. 1 (IX, 846). Imposing burdens on interstate commerce.

Approved in In re Sydow, 4 Ariz. 210, 36 Pac. 215, holding valid Rev. St., tit. 42, par. 2239, § 9, requiring dealers in merchandise, except agricultural products of territory, except when sold by producer, to pay license tax; Commonwealth v. Caldwell, 190 Mass. 356, 357, 76 N. E. 955, holding void Rev. Laws, c. 65, §§ 15, 16, permitting sales by peddlers of agricultural products of United States without license, but forbidding unlicensed sales of agricultural products of other countries.

100 U. S. 446-456, 25 L. 695, CASE v. CITIZEN'S BANK.

Syl. 2 (IX, 848). Acts of bank cashier—Scope of authority.

Approved in Goshorn v. People's Nat. Bank, 32 Ind. App. 432, 102 Am. St. Rep. 248, 69 N. E. 186, where depositor gave bank cashier check with instructions to remit amount thereof to trust company for deposit, bank is liable for cashier's misappropriation of fund.

100 U. S. 457-482, 25 L. 593, REMOVAL CASES.

Syl. 1 (IX, 849). Removal—Diverse citizenship.

Approved in Sweeney v. Carter Oil Co., 199 U. S. 258, 50 L. 181, 26 Sup. Ct. 55, two citizens of different state may sue citizen of third state in circuit court for district of latter's residence; Dawson v. Columbia Avenue etc. Trust Co., 197 U. S. 181, 49 L. 716, 25 Sup. Ct. 420, denying federal jurisdiction over suit against city by mortgagee of waterworks to enforce city's contract with waterworks, where no diversity of citizenship exists between city and waterworks; Johnston etc. Switch Co. v. Buda etc. Mfg. Co., 148 Fed. 883, suit between corporations of different states is removable though corporation and individuals who are citizens of same state as complainant are joined as defendants with moving corporation, and second corporation is mere stakeholder and individuals are its officers; Lucas v. Milliken, 139 Fed. 828, in suit by stockholder against corporation and other stockholders to prevent deal by latter to control corporation, to cancel corporation's contract and substitute another by which conspirators would profit, corporation aligned with complainant for removal purposes in accordance with interest shown by bill; Boatmen's Bank v. Fritzlen, 135 Fed. 658, 68 C. C. A. 288, determining jurisdiction over controversy over foreclosure of mortgages; Groel v. United Elec. Co., 132 Fed. 254, 257, 261, in equity suit by stockholder in own name on right of action in corporation, latter aligned with defendants whenever officers shown to be opposed to object sought by complaining stockholder, and when opposition not shown it is aligned with complainant; Laden v. Meck, 130 Fed. 879, 65 C. C. A. 361, removal petition alleging merely that certain petitioners are residents of state other than that of which plaintiff is citizen, and that none of

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petitioners are residents and citizens of same state as plaintiff, is insufficient.

Syl. 4 (IX, 852). Removal bond—Discretion to accept.

Approved in Mutual Life Ins. Co. v. Langley, 145 Fed. 420, where proper petition and bond for removal filed in time with clerk of state court and certified copy of record filed in federal court, latter acquires jurisdiction without order of state court transferring cause.

Syl. 6 (IX, 853). No removal after trial begun.

Approved in Atlanta etc. Ry. Co. v. Southern Ry. Co., 131 Fed. 661, 66 C. C. A. 601, granting removal though defendant in state court filed answer and motion for dissolution of ex parte restraining order, which motion judge heard in chambers on ex parte affidavits.

Syl. 7 (IX, 853). Removal—Cause must appear to state court.

Approved in Illinois Central Ry. Co. v. Jones, 118 Ky. 165, 80 S. W. 486, following rule; Corporation Commission v. Southern Ry. Co., 135 N. C. 81, 47 S. E. 232, removal petition alleging that proceeding before corporation commission to compel railroad to deliver coal cars to siding was of civil nature to assert right of commission to compel delivery of interstate shipments, and that matter in controversy exceeded sum of $2,000, is insufficient.

Syl. 9 (IX, 855). Removal—Time to file transcript.

Approved in Groton Bridge etc. Co. v. American Bridge Co., 137 Fed. 290, under Removal Act of 1888, § 3, it is sufficient if petition is presented to judge in chambers, with bond, and after approval of bond, petition and bond are filed with clerk of court of county where venue laid.

Syl. 11 (IX, 856). Equitable assignments—Payment out of fund.

Approved in Johnston v. Huff, 133 Fed. 706, 66 C. C. A. 534, where contractor to feed track gang agreed with supply house, whereby it was to give him credit, and he gave it order on railroad for sums due him, an order not presented till day prior to voluntary bankruptcy, was preference.

100 U. S. 483-491, 25 L. 628, HAUENSTEIN v. LYNHAM.

Syl. 1 (IX, 856). Naturalization—Presumptions.

Approved in Ehrlich v. Weber, 114 Tenn. 717, 88 S. W. 189, one born in foreign country, is presumed to be alien though he has long resided here.

Syl. 6 (IX, 857). Treaties liberally construed.

Approved in In re Wyman, 191 Mass. 278, 77 N. E. 380, under Russian treaty of 1832, on death of Russian subject intestate, Russian vice-consul entitled to letters in preference to public administrator.

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Syl. 7 (IX, 857). Treaty rights superior to statutes.

Approved in Dockstader v. Kershaw, 4 Penne. (Del.) 400, 55 Atl. 341, Rev. Code 1852, as amended 1893, c. 81, § 1, permitting alien kindred to take lands under intestate laws only when residents of state at time of death of intestate, violates British treaty of 1900; In re Wyman, 191 Mass. 279, 77 N. E. 380, under Russian treaty of 1832, on death of Russian subject intestate Russian vice-consul entitled to letters in preference to public administrator; Ehrlich v. Weber, 114 Tenn. 726, 88 S. W. 192, where complainant based claim on provisions of treaty, not necessary to make formal claim of rights under treaty.

100 U. S. 491-499, 25 L. 558, KIRTLAND v. HOTCHKISS.

Syl. 1 (IX, 858). Federal jurisdiction—State taxation.

Approved in St. Louis etc. Ry. Co. v. Davis, 132 Fed. 634, denying federal jurisdiction to enjoin state board from certifying assessment of railroad property at higher percentage of actual value than property of other classes is assessed, contrary to state law.

Syl. 2 (IX, 858). Taxation of debt—Situs.

Approved in Gilbertson v. Oliver, 129 Iowa, 571, 105 N. W. 1003, indebtedness to nonresident having no agent in state, she having evidence of debt, is not liable to inheritance tax.

Syl. 3 (IX, 859). State tax of debts due by nonresidents.

Approved in Union etc. Transit Co. v. Kentucky, 199 U. S. 205, 50 L. 154, 26 Sup. Ct. 36, due process of law is denied Kentucky railroad by tax under Kentucky statute on its rolling stock permanently located in other states and employed there in its business; Goodsite v. Lane, 139 Fed. 594, under Ohio act of 1890, taxing all property in state and all moneys and credits owned by residents, where trust estate and beneficiaries are outside state, and trustee did not act such in Ohio, though he resided there, estate not taxable; Kingsley v. Merrill, 122 Wis. 201, 99 N. W. 1049, 67 L. R. A. 200, upholding Rev. St. 1898, § 1036, making debts due from solvent debtors subject to taxation.

100 U. S. 500-507, 25 L. 763, PARISH v. UNITED STATES.

Syl. 2 (IX, 860). Damages for breach of contract.

Approved in Choctaw etc. R. R. Co. v. Jacobs, 15 Okl. 500, 82 Pac. 504, determining damages in action against railroad for delay in delivering freight; Tootle v. Kent, 12 Okl. 691, 73 Pac. 315, determining damages to merchant for wrongful acts of partner directly causing closing of store by virtue of fraudulent chattel mortgage.

100 U. S. 508-514, 25 L. 631, UNITED STATES v. BOWEN.

Syl. 2 (IX, 860). Construction of Revised Statutes.

Approved in Benson v. Henkel, 198 U. S. 13, 49 L. 923, 25 Sup. Ct. 569, District of Columbia is district of United States within Rev.

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St., § 1014, authorizing removal for trial of person charged with offense against United States to federal district where trial to be had; United States v. Raisch, 144 Fed. 490, Rev. St., § 5424, prohibits felonious making of certificate of naturalization by person other than person applying to be admitted a citizen or appearing as witness for such person; Schmidt v. United States, 133 Fed. 261, 66 C. C. A. 389, one knowingly swearing falsely to material fact in naturalization proceedings in state court may be indicted and punished for perjury in federal court, under 32 Stat. 1222, § 39; United States v. York, 131 Fed. 328, Rev. St., § 5424, did not include uttering of forged naturalization certificate by person other than one applying therefor or appearing as witness for person so applying; Holland v. Webster, 43 Fla. 91, 29 So. 627, under Rev. St., §§ 1279, 1462, supreme court must entertain motion to quash appeal taken merely for delay, though case not reached for final hearing on docket; Trustees of American Bank v. McComb, 105 Va. 478, 54 S. E. 16, under Acts 1897-98, pp. 896, 910, c. 866, trustee under deed of trust for creditors is holder in due course.

Distinguished in Clagett v. Duluth Township, 143 Fed. 826, Minn. Gen. St. 1878, preparation and publication of which authorized by legislature, and which was made competent evidence of laws of state, being private compilation, when verity thereof is questioned, court looks to original enactments.

100 U. S. 514-535, 25 L. 699, MOUNT PLEASANT v. BECKWITH.

Syl. 1 (IX, 862). Modification of municipality's powers.

Approved in Worcester v. Worcester etc. St. Ry. Co., 196 U. S. 550, 49 L. 596, 25 Sup. Ct. 327, city cannot invoke federal constitution contract clause against abrogation by state law, with consent of railroad, of provisions of contract between company and city with reference to paving of streets; Folsom v. Greenwood Co., 137 Fed. 450, 69 C. C. A. 473, where statute incorporated township to enable people to issue railroad aid bonds, and provided that county auditor and treasurer should assess taxes to pay bonds, state could not deprive bondholder of such remedy unless equally efficacious remedies substituted; Ex parte Folsom, 131 Fed. 504, where S. C. act 1882, chartering railroad authorized townships to issue aid bonds and authorized county auditor and treasurer to assess and collect taxes to pay bonds, constitutional amendment abolishing corporate existence of townships which had issued bonds was void; Chicago v. Cicero, 210 Ill. 294, 71 N. E. 358, upholding Laws 1903, p. 113, § 1, enlarging corporate limits of sanitary district created by Hurd's Rev. St. 1901, p. 347, § 26; Attorney General v. Springwells Tp., 143 Mich. 534, 107 N. W. 91, upholding Loc. Acts 1905, p. 1068, No. 627, providing for annexation of territory to Detroit; Van Cleve v. Passaic Valley Sewerage Commrs., 71 N. J. L. 198, 58 Atl. 577, upholding act of 1903 to relieve from pollution streams within Passaic Valley

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sewerage district; In re School Committee, 26 R. I. 166, 58 Atl. 628, Pub. Laws 1903, p. 33, c. 1101, abolishing school districts and vesting property thereof in towns, does not violate contract clause of constitution; Lincoln Co. v. Brock, 37 Wash. 17, 79 Pac. 478, county is municipal corporation within Const., art. 1, § 16, prohibiting appropriation of right of way for use of corporation, other than municipal, until compensation made. See 97 Am. St. Rep. 349, note.

Distinguished in Folsom v. Greenwood Co., 130 Fed. 733, county which can levy taxes only for specified purposes is not liable for bonds issued before county created by township which was at time body corporate of another county, but which, since its annexation to new county, has been dissolved.

Syl. 4 (IX, 863). Division of municipalities—Debts.

Approved in Graham v. Folsom, 200 U. S. 253, 50 L. 469, 26 Sup. Ct. 245, county auditors and treasurers who are instruments employed by legislature to assess and collect taxes may be compelled by mandamus to levy tax to pay judgment on township bonds whose corporate existence abolished; Gamble v. Rural Independent School Dist., 146 Fed. 119, 120, under Iowa Code 1873, § 1715, providing for division of assets and liabilities on division of school district, suit by bondholder of district which has ceased to exist by reason of division of territory into new districts, to enforce payments by new districts, is within federal equity jurisdiction; Planters' etc. Bank v. Huiett Tp., 132 Fed. 628, fact that township after it issued bonds was transferred from old county and included in new county does not affect liability of people or property therein for payment of bonds; Taylor v. Pine Grove Tp., 132 Fed. 567, where, after issuance of bonds by township, all but small part of it included in new county, and its boundaries changed so as to include new territory, all territory and property therein became liable for bonds; Pepin Tp. v. Sage, 129 Fed. 659, 64 C. C. A. 169, applying rule where special act creating village repealed; Shoshone County v. Thompson, 11 Idaho, 143, 81 Pac. 76, under act of 1903, annexing portion of Shoshone county to Nez Perce county, tax sale certificates and tax deeds and property acquired thereunder, as well as delinquent taxes, belong to former county; Commrs. Greer Co. v. Clarke, 12 Okl. 211, 70 Pac. 211, holding Greer county, Oklahoma, liable for debts of territory formerly known as Greer county, Texas, which territory was decided to be in Oklahoma; School Dist. No. 76 v. Capitol Nat. Bank, 7 Okl. 50, 54 Pac. 311, holder of school warrants drawn by county clerk on county treasurer under school law of 1890, to be paid out unappropriated moneys of separate school fund, cannot sue township or school districts created out of township; City of Guthrie v. Wylie, 6 Okl. 66, 55 Pac. 105, provisional city of Guthrie not being de facto municipality, its successors are not liable on its contracts; City of Guthrie v. Territory, 1 Okl. 202, 31 Pac. 194, 11 L. R. A. 418, fact that village corporation

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has changed into city since liability of village for debts of provisional organization fixed by legislation does not relieve city from liability for debts.

Distinguished in Wichman v. Placerville, 147 Cal. 164, 81 Pac. 538, where city authorized by special statute to issue bonds for relief of fire department, and its former charter repealed and new charter adopted containing no such authority, subsequent issue of bonds under old act was void.

100 U. S. 539-547, 25 L. 705, PEOPLE v. WEAVER.

Syl. 2 (IX, 865). State tax on national bank shares.

Approved in Douglas Park Jockey Club v. Grainger, 146 Fed. 417, holding valid Kentucky act of 1906, regulating racing; Consolidated Gas Co. v. Mayor etc. of Baltimore, 101 Md. 558, 109 Am. St. Rep. 598, 61 Atl. 538, 1 L. R. A. (N. S.) 263, holding void assessment of street easements of gas company arbitrarily fixed at sum nearly million dollars in excess of corporation's capital stock, and same afterward reduced by deduction of inflated valuation of corporation's personalty and residuum divided by two; Ankeny v. Blakley, 44 Or. 86, 74 Pac. 488, holding assessment of national bank stock not so excessive as compared with assessment on other moneyed capital as to amount to discrimination; dissenting opinion in Kingsley v. Merrill, 122 Wis. 205, 99 N. W. 1050, 67 L. R. A. 200, majority upholding Rev. St. 1898, § 1036, taxing debts due from solvent debtors.

Distinguished in dissenting opinion in San Francisco Nat. Bank v. Dodge, 197 U. S. 111, 113, 49 L. 687, 688, 25 Sup. Ct. 384, majority holding discrimination against national banks and in favor of state banks, results from taxation of national bank shares, under Cal. Pol. Code, §§ 3608-3610, at market value, while franchises not included in taxing state bank's property.

(IX, 865.) Miscellaneous. Cited in Delaware etc. R. R. Co. v. Pennsylvania, 198 U. S. 352, 49 L. 1081, 25 Sup. Ct. 669, supreme court is concluded by state court's construction of state statute.

100 U. S. 548-563, 25 L. 710, NEWTON v. MAHONING CO. COMMISSIONERS.

Syl. 1 (IX, 869). Legislature may abolish office.

Approved in McGovern v. Mitchell, 78 Conn. 553, 63 Atl. 439, upholding act of 1905, increasing salaries of judges of supreme court of errors and of superior court, act to take effect from its passage; Mial v. Ellington, 134 N. C. 142, 46 S. E. 964, 65 L. R. A. 697, holding road supervisor appointed for definite term under act of legislature deprived of office by subsequent statute abolishing office; dissenting opinion in Territory v. Albright, 12 N. M. 318, 78 Pac. 212, majority holding assessor appointed pursuant to amendment of 1903 to Bernadillo county division act, prior to division act taking effect, not entitled to office.

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Syl. 2 (IX, 869). Contracts—Laws regulating government.

Approved in Mial v. Ellington, 134 N. C. 165, 46 S. E. 972, 65 L. R. A. 697, holding road supervisor appointed for definite term under statute deprived of office by subsequent statute abolishing office; State v. Irvine, 14 Wyo. 387, 84 Pac. 106, where state passed act creating agricultural college, which was public corporation, fact that property devised in trust for its benefit did not preclude repeal of incorporating act.

Syl. 3 (IX, 870). Prior cannot bind later legislature.

Approved in Lang v. Lutz, 180 N. Y. 259, 73 N. E. 26, where debt of corporation was created in 1900, right of creditor to enforce stockholder's liability in 1902, given by Laws 1892, p. 1841, c. 688, was governed by such act, and not by Laws 1901, p. 971, c. 354; State v. Irvine, 14 Wyo. 375, 84 Pac. 101, Wyoming Agricultural College incorporated by act of 1891 was public corporation whose charter state could repeal by subsequent statute.

Syl. 4 (IX, 870). State contracts—Nothing conceded.

Approved in Knoxville Water Co. v. Knoxville, 200 U. S. 35, 50 L. 359, 26 Sup. Ct. 224, municipal grant of waterworks franchise does not impliedly devest municipality of power to construct own waterworks; Story v. Woolverton, 31 Mont. 354, 78 Pac. 590, act of Congress of 1891, granting Montana one section of land of former military reservation to be selected "so as to embrace buildings and improvements thereon," did not grant use of water of stream from which government had taken water by means of ditch across other lands to lands granted.

(IX, 869.) Miscellaneous. Cited in Humphrey v. Humphrey, 115 Mo. App. 363, 91 S. W. 405, determining domicile of party to divorce.

100 U. S. 564-571, 25 L. 735, MEEKS v. OLPHERTS.

Syl. 2 (IX, 871). Limitations against cestui.

See 104 Am. St. Rep. 751, note.

Syl. 3 (IX, 871). Limitation against administrator bars heir.

Approved in Williamson v. Beardsley, 137 Fed. 471, 69 C. C. A. 615, three year limitation prescribed by Utah Rev. St. 1898, § 2870, within which action may be brought by one claiming under decedent to set aside probate sale, runs during minority of complainant.

100 U. S. 578-584, 25 L. 618, DICKERSON v. COLGROVE.

Syl. 1 (IX, 872). Estoppel by conduct or words.

Approved in Cheatham v. Edgefield Mfg. Co., 131 Fed. 120, following rule; Marine Iron Works v. Wiess, 148 Fed. 154, 155, determining extent of estoppel where plaintiff for whom defendant contracted to build boat of specified draft was present during building and obtained knowledge that boat would exceed draft, but did not

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announce intention to reject boat, but made suggestions as to construction; Anderson v. Messinger, 146 Fed. 948, determining effect of estoppel on void acts of trustee; Wiser v. Lawler, 7 Ariz. 185, 62 Pac. 701, holding where defendant contracted for sale of mine in installments, reserving title until full payment, and purchasers assigned interest to corporation which defaulted in installment, defendant not estopped to assert title by becoming party to fraudulent prospectus issued by company; Dover v. Pittsburg Oil Co., 143 Cal. 505, 77 Pac. 406, where owner of stock certificates ratified indorsement thereof in his name by ostensible agent and informed corporation secretary indorsement was all right, he is estopped to deny agency as against bona fide transferees for value; Holt v. King, 54 W. Va. 447, 47 S. E. 365, where holder of vendor's lien of land sold for taxes proposed to redeem, and purchaser played subsequent lienor and vendor's lienor against each other, and purchaser secretly sells sheriff's certificate to subsequent lienor, latter enjoined from obtaining deed.

Syl. 2 (IX, 874). Estoppel in pais as defense at law.

Approved in Campbell v. Golden Cycle Min. Co., 141 Fed. 616, estoppel in pais forms no basis for prohibition of actions of ejectment and conversion; South Penn. Oil Co. v. Calf Creek Oil etc. Co., 140 Fed. 514, where actions by owner of land and lessee pending against defendant for taking oil from land and rights of plaintiffs under lease as between themselves are indefinite, and defense to both actions is estoppel in pais, equity has jurisdiction over action by defendant against both defendants to determine entire controversy; Anglo-American Land etc. Co. v. Lombard, 132 Fed. 733, 68 C. C. A. 89, in federal action at law to enforce stockholder's liability, defendant cannot set off indebtedness from corporation to him; Hoge v. Fidelity Loan & Trust Co., 103 Va. 11, 48 S. E. 495, applying rule in suit to enjoin judgment at law.

Syl. 3 (IX, 874). Ejectment on title by estoppel.

Approved in Linton v. Heye, 69 Neb. 455, 111 Am. St. Rep. 559, 95 N. W. 1041, statute of limitations respecting actions for recovery of realty does not deprive owner of property without due process of law; Wilson v. Braden, 56 W. Va. 376, 107 Am. St. Rep. 930, 49 S. E. 411, determining whether party had had open, adverse, continuous, and exclusive possession under color of title for statutory period.

Syl. 4 (IX, 875). Quitclaim grantee—Bona fide purchaser.

Approved in Whitney v. Dewey, 10 Idaho, 657, 80 Pac. 1128, 69 L. R. A. 572, following rule.

100 U. S. 605-613, 25 L. 892, SHAW v. LITTLE ROCK ETC. R. R. CO.

Syl. 1 (IX, 877). Mortgage trustee represents bondholders.

Approved in National Salt Co. v. Ingraham, 143 Fed. 810, determining effect of judgment against trustee as against holder of cer-

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tificate of indebtedness; In re Kenney Co., 136 Fed. 455, where creditors of bankrupt, prior to bankruptcy, assigned claims to committee in trust to buy bankrupt's property and sell same for their benefit, they could not prove equitable interest as claims against bankrupt estate; Industrial etc. Trust v. Tod, 180 N. Y. 226, 73 N. E. 10, where bondholders of insolvent railroad created reorganization committee, which was to adopt reorganization plan, and whose construction of reorganization was to be final, bondholder deprived of right to withdraw bonds by construction of committee could recover damages of committee; Virginia etc. Power Co. v. Fisher, 104 Va. 135, 136, 51 S. E. 203, denying right to stockholders to sue for appointment of receiver where one person controlled majority of stock and elected his own directors, who colluded with him in spoliation of corporation's property.

Syl. 3 (IX, 878). Majority bondholders govern.

Approved in Bowling Green Trust Co. v. Virginia etc. R. Co., 132 Fed. 924, refusing individual holders of minority of railroad bonds to intervene in foreclosure to displacement of trustee who has sued on request of majority, where only objection is that trustee is unsuitable to conduct suit because certain directors are bondholders.

Syl. 4 (IX, 878). Railroad mortgages—Loan to complete road.

Distinguished in Cochran v. Pittsburg etc. R. Co., 150 Fed. 682, upholding right of bondholder to foreclose where request to trustee by majority bondholders is impossible, and trustee is antagonistic to foreclosure by reason of interest in second mortgage.

100 U. S. 617-620, 25 L. 769, KIDD v. JOHNSON.

Syl. 1 (IX, 879). Trademark not salable.

Approved in Bulte v. Igleheart Bros., 137 Fed. 499, 70 C. C. A. 76, assignment of flour trademark, disassociated from business in which it was used, is void.

Syl. 2 (IX, 879). Sale of trademark with business.

Approved in Lea v. New Home etc. Mach. Co., 139 Fed. 734, contract purporting to license use of trade name for sewing-machine, being void, will not support action for reserved royalties where only thing granted is right to sell machines made by defendant, with which plaintiff has had no connection; Griggs v. Erie Preserving Co., 131 Fed. 362, construing instrument as assignment of exclusive ownership and goodwill in trademarks in certain states, so as to entitle assignee to enjoin infringement; Falk v. American etc. Trading Co., 180 N. Y. 450, 105 Am. St. Rep. 778, 73 N. E. 240, where owner of trademark used to distinguish one cigar from another transferred it detached from business in which it had been used, transferee cannot enjoin its use by another.

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100 U. S. 621-629, 25 L. 607, WILLS v. RUSSELL.

Syl. 3 (IX, 881). Latitude in cross-examination.

Approved in dissenting opinion in Resurrection Gold Min. Co. v. Fortune Gold Min. Co., 129 Fed. 682, 688, 64 C. C. A. 180, majority holding it reversible error to restrict cross-examination because cross-examiner could call witness or other witnesses to prove facts he seeks; Ballıet v. United States, 129 Fed. 696, 64 C. C. A. 201, arguendo.

100 U. S. 630-643, 25 L. 713, NATIONAL SAVING BANK v. CRESSWELL.

Syl. 1 (IX, 881). Sale of encumbered property—Priorities.

Approved in Neely v. Williams, 149 Fed. 64, where owner of separate tracts devised them together, charged with annuities, and devisee sold them to different purchasers by warranty deeds, last grantee who had procured release of annuities could not enforce contribution from prior purchasers, but could deduct entire expenditure from deferred purchase money payment due grantor.

100 U. S. 671, 672, 25 L. 738, BURNS v. MEYER.

Syl. 1 (IX, 884). Infringement of patent.

Cited in Columbus Chain Co. v. Standard Chain Co., 148 Fed. 625, arguendo.

100 U. S. 676-679, 25 L. 754, HOWE MACHINE CO. v. GAGE.

Syl. 1 (IX, 884). Peddler's license—Commerce.

Approved in Bacon v. Locke, 42 Wash. 217, 219, 83 Pac. 722, holding void Laws 1905, pp. 372, 373, imposing license tax on peddlers by sample after shipment to state.

Syl. 2 (IX, 886). Peddler's license.

Approved in Kehrer v. Stewart, 197 U. S. 66, 49 L. 667, 25 Sup. Ct. 403, upholding Georgia act of 1900, imposing tax on resident managers of nonresident meat-packers; Bacon v. Locke, 42 Wash. 218, 83 Pac. 722, holding void Laws 1905, pp. 372, 373, imposing license tax on peddlers by sample after shipment to state.

Distinguished in Wrought Iron Range Co. v. Campen, 135 N. C. 523, 47 S. E. 664, holding void Revenue Act 1903, § 36, imposing license tax on stove peddlers, in so far as applied to sales by sample of goods made in another state and delivered in original package.

100 U. S. 686-693, 25 L. 766, FIRST NATIONAL BANK v. BURKHARDT.

Syl. 2 (IX, 888). Checks received as deposits.

Approved in Talbott v. Metropolitan Life Ins. Co., 142 Fed. 699, where general agent authorized to accept renewal premiums within thirty days after due, sent bill to bank, and insured gave bank draft on third party, which gave him receipted bill, and drew own

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draft in favor of agent, but insured's draft dishonored, question of payment of premium was for jury; Parkes v. Bryant, 142 Ala. 629, 38 So. 181, in action on bond of receiver in chancery for moneys received by him, plea that money received by predecessor who gave him check for it, which he deposited in bank as register and bank failed, is insufficient; National Bank of N. J. v. Berrall, 70 N. J. L. 760, 103 Am. St. Rep. 821, 58 Atl. 190, 66 L. R. A. 599, where payee of check indorsed it generally and deposited it in his bank, which forwarded it to drawee bank for collection, and latter paid it by mistake, drawee bank cannot recover of payee; Winfield Nat. Bank v. McWilliams, 9 Okl. 509, 60 Pac. 233, where bank receives from correspondent a check indorsed in blank, and permits existing indebtedness to remain unpaid by reason thereof, it is entitled to proceeds against real owner, though check not actually collected until after failure of transmitting bank.

Syl. 5 (IX, 889). Usage does not make contract.

Approved in Moore v. United States, 196 U. S. 166, 49 L. 433, 25 Sup. Ct. 202, custom existing in San Francisco between shippers and ship owners requiring consignee to designate berth for discharge of cargo does not prevail over contract to deliver coal on wharf to quartermaster at Honolulu, where different custom prevails; Lillard v. Kentucky Dist. etc. Co., 134 Fed. 174, 67 C. C. A. 74, admitting evidence of custom to show contract to deliver distillery slop at cattle-feeding lot supplied by distiller contemplated lot should be supplied by distillery with pens equipped with pipes and troughs; McSherry v. Blanchfield, 68 Kan. 312, 75 Pac. 122, refusing evidence of custom among elevator-men, in suit for its value, by owner of wheat deposited in warehouse under express contract, which warehousemen sold.

100 U. S. 693-699, 25 L. 761, MANNING v. JOHN HANCOCK MUT. LIFE INS. CO.

Syl. 3 (IX, 889). Evidence—Presumptions of fact.

Approved in Vernon v. United States, 146 Fed. 125, holding circumstantial evidence herein insufficient in prosecution for bribery of government official, to warrant finding that defendant promised or gave money to officer to influence official action; United States etc. Guaranty Co. v. Des Moines Nat. Bank, 145 Fed. 279, applying rule in action on indemnity bond of bank teller; Fidelity & Casualty Co. v. Bank of Timmonsville, 139 Fed. 105, where cashier's bond given March 7, 1901, only covered acts committed during its currency and within twelve months prior to discovery of default, it did not cover larceny of coin deposited May 19, 1900, but not found in bank's vault on his absconding in August, 1901; State v. Kelly, 77 Conn. 271, 58 Atl. 707, where defendant accused of poisoning wife and claimed suicide, evidence that at times wife seemed despondent and said she had stomach trouble and had no de-

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sire to live is too remote; Young v. Montgomery, 161 Ind. 70, 67 N. E. 685, applying rule in will contest to evidence of undue influence.

Distinguished in Western Travelers' Acc. Assn. v. Holbrook, 65 Neb. 472, 91 N. W. 277, where circumstantial evidence shows that one has been injured by fall from dangerous height, it is presumed that fall was accidental.

100 U. S. 699-704, 25 L. 750, FIRST NATIONAL BANK v. GRAHAM.

Syl. 2 (IX, 889). Corporation's torts—Ultra Vires.

Approved in Stewart v. Wright, 147 Fed. 327, 328, permitting recovery from bank of money lost on fake footrace by one given double cross where bank officials, knowing of fraud, recommended fakir as man of standing; Johnston etc. Hat Co. v. National Bank, 4 Okl. 26, 44 Pac. 194, holding bank liable for fraudulent acts of manager in entering into conspiracy whereby fraudulent chattel mortgage made to bank by mercantile firm; Metropolitan Stock Exchange v. Lyndonville Nat. Bank, 76 Vt. 308, 57 Atl. 102, in action against national bank for breach of contract, plea that defendant was national bank and had no authority to carry out contract is good.

Syl. 3 (IX, 891). National Bank failure—Special deposits.

Approved in Hobbs v. Boatright, 195 Mo. 729, 93 S. W. 940, where bank cashier assisted conspirators in defrauding stranger by fake footrace by permitting use of bank for transferance of money, bank and cashier are liable to stranger.

CI UNITED STATES.

101 U. S. 16-22, 25 L. 980, BOWDITCH v. BOSTON.

Syl. 1 (IX, 895). Direction of verdict.

Approved in Parks v. Southern Ry. Co., 143 Fed. 277, after plaintiff's evidence introduced, court may deny plaintiff motion to take nonsuit and direct verdict for defendant; Gunn v. Union R. R. Co., 27 R. I. 327, 62 Atl. 121, upholding Gen. Laws, 1896, c. 251, § 11, authorizing supreme court to direct judgment without further jury trial.

Syl. 2 (IX, 895). Destruction of property to check fire.

Approved in Moyer v. Peabody, 148 Fed. 876, where governor declares state of insurrection and calls out militia to restore order, officers thereof arresting one for taking part in insurrection are not civilly liable for unintentional error.

101 U. S. 22-33, 25 L. 989, MISSOURI v. LEWIS.

Syl. 1 (IX, 896). Equal protection—Fourteenth amendment.

Approved in McKinster v. Sager, 163 Ind. 681, 106 Am. St. Rep. 268, 72 N. E. 858, 68 L. R. A. 273, holding void act of 1903, making sales by

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merchant of any of stock, save in usual course of trade, void as to certain creditors, unless certain conditions complied with; Sellers v. Hayes, 163 Ind. 435, 72 N. E. 124, holding void act of 1901, declaring void as against creditors sales of portion of stock of merchandise otherwise than in ordinary course of trade unless certain conditions observed; People v. Shuler, 136 Mich. 165, 98 N. W. 988, and People v. Robinson, 135 Mich. 513, 98 N. W. 12, both upholding act of 1899, requiring druggists in local option counties to file with prosecuting attorney sworn report of liquors sold; dissenting opinion in Wright v. Hart, 182 N. Y. 358, 75 N. E. 414, 2 L. R. A. (N. S.) 338, majority holding void act of 1902, making void as to creditors sales of stock of merchandise in bulk without complying with certain conditions.

Syl. 2 (IX, 897). Equal protection—Judicial procedure.

Approved in Gardner v. Michigan, 199 U. S. 333, 50 L. 217, 26 Sup. Ct. 106, Mich. Pub. Acts 1893, p. 337, as amended in 1895, providing that jury lists be made up by jury commissioners appointed by governor, does not deny equal protection to litigants of Wayne county; Cincinnati Street R. Co. v. Snell, 193 U. S. 36, 48 L. 607, 24 Sup. Ct. 319, upholding Ohio Rev. St., § 5030, providing for change of venue for local prejudice where opposite party is corporation with more than fifty stockholders, though corporation denied privilege; In re Finley, 1 Cal. App, 210, 81 Pac. 1046, upholding Penal Code, § 246, imposing death penalty on life termer in state prison, who, with malice aforethought, commits assault with deadly weapon.

Syl. 3 (IX, 897). Fourteenth amendment—Local self-government.

Approved in Globe Elevator Co. v. Andrew, 144 Fed. 879, Laws Wis. 1905, p. 37, c. 19, as amended, creating grain commission and providing for inspection and grading of grain at Superior does not deny equal protection of laws.

Syl. 4 (IX, 898). Fourteenth amendment—Different remedies.

Approved in Kentucky v. Powers, 139 Fed. 490, upholding Kentucky statute providing that court of appeals cannot review challenges to juries in criminal cases; State v. Jack, 69 Kan. 393, 76 Pac. 913, 1 L. R. A. (N. S.) 167, upholding Laws 1897, c. 265, p. 481, known as anti-trust act; White v. Bracelin, 144 Mich. 335, 107 N. W. 1056, upholding act of 1905, making it penal offense to keep saloon within one hundred rods of any public school in certain county; State v. Marciniak, 97 Minn. 360, 105 N. W. 967, upholding municipal court act conferring jurisdiction on such court to hear violations of city ordinances without jury trial; State v. Tower, 185 Mo. 95, 84 S. W. 13, 68 L. R. A. 402, upholding act of 1901, making emission of dense smoke in cities which now have, or may hereafter have, hundred thousand population, a nuisance; Gay v. Thomas, 5 Okl. 27, 46 Pac. 586, upholding act of 1895, providing that where personal property is situated in unorganized district, it shall be taxed in county to which such district is attached for judicial purposes; Gunn v. Union R. R. Co., 27 R. I. 323, 62 Atl. 119, upholding Gen. Laws 1896, c. 251, § 11, authorizing supreme court to direct judgment without

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further jury trial; dissenting opinion in People v. Johnson, 34 Colo. 176, 86 Pac. 243, majority holding void provisions of Denver charter of 1904, increasing number of judges of county court to two, and changing time of election of certain officers who are state officers; dissenting opinion in State v. Barrett, 138 N. C. 649, 50 S. E. 512, majority upholding act of 1903, making it unlawful for others than licensed retailers to sell or keep for sale in certain county any liquors, and making possession by anyone of more than one quart prima facie evidence of his keeping it for sale.

101 U. S. 34-37, 25 L. 948, ARTHUR v. DODGE.

(IX, 899.) Miscellaneous. Cited in Benson v. Henkel, 198 U. S. 13, 49 L. 923, 25 Sup. Ct. 569, District of Columbia is district of United States within Rev. St., § 1014, relating to removal for trial of person charged with offense against government to federal district where trial to be had.

101 U. S. 43-51, 25 L. 822, FIRST NATIONAL BANK v. HALL.

Syl. 1 (IX, 900). Misunderstanding as to terms of contract.

Approved in Abbott v. Flint, 78 Vt. 278, 62 Atl. 721, reforming deed where grantor and grantee supposed, when deed executed and for several years thereafter, that it included other tract.

Syl. 2 (IX, 900). Contract uncertain in part.

Distinguished in Kelley Maus & Co. v. Sibley, 137 Fed. 588, 69 C. C. A. 674, construing contract for sale of bolts as several as to each character of bolts.

Syl. 3 (IX, 900). Acceptance variant from offer.

Approved in Four Oil Co. v. United Oil Producers, 145 Cal. 625, 79 Pac. 367, 68 L. R. A. 226, where one offers to sell crude oil of fifteen degrees, acceptance of offer on condition that oil be of fifteen degrees at sixty degrees temperature is not acceptance of offer.

101 U. S. 51-67, 25 L. 993, AMOSKEAG MANUFACTURING CO. v. TRAINER.

Syl. 1 (IX, 901). Adoption of trademark.

Approved in Galena etc. Oil Co. v. Fuller, 142 Fed. 1007, oil trademark consisting of five-pointed star, with word "Galena" above and word "Oil" below, and letter "G," in center, not infringed by six-pointed star made by imposing one triangle on another and having words "Extra Star."

Syl. 3 (IX, 902). Generic name not subject of trademark.

Approved in Dennison Mfg. Co. v. Scharf etc. Label & Box Co., 135 Fed. 628, 634, 68 C. C. A. 263, series of numbers used by label manufacturer in catalogues and in connection with firm name on label boxes to designate style of labels are not good trademark.

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Syl. 4 (IX, 903). Figures or letters as trademark.

Approved in Buzby v. Davis, 150 Fed. 278, enjoining use of symbol of keystone of arch as trademark for oil.

Syl. 5 (IX, 903). Trademark—Similarity not deceptive.

Approved in W. R. Lynn Shoe Co. v. Auburn-Lynn Shoe Co., 100 Me. 474, 62 Atl. 504, holding shoe trademark, "Auburn-Lynn," infringed by mark using name "Auburn-Lynn Shoe Co."

101 U. S. 68-71, 25 L. 876, CENTRAL TRUST CO. v. FIRST NATIONAL BANK.

Syl. 4 (IX, 905). Notes—Rights of assignee.

Approved in Tyson v. Joyner, 139 N. C. 72, 51 S. E. 804, where in action on note, assignment to plaintiff is in issue, admission of note with indorsement thereon, without proof of signature of indorser, is insufficient to show plaintiff is legal holder, so as to cut off defenses available against indorser.

101 U. S. 71-87, 25 L. 950, THOMAS v. WEST JERSEY RY. CO.

Syl. 1 (IX, 905). Railroads—Sale or lease of road.

See 103 Am. St. Rep. 552, 556, note.

Syl. 2 (IX, 906). Corporations—Charter measure of powers.

Approved in Quinby v. Consumer's Gas Trust Co., 140 Fed. 364, corporation organized to supply natural gas to consumers cannot make agreement in franchise contract with city giving city option to purchase all its property; Renfrow v. Grimes, 6 Okl. 613, 52 Pac. 391, board for leasing school lands cannot accept application for lease for longer term than three years and compel applicant to comply with terms thereof.

Syl. 3 (IX, 908). Ultra vires act—Assent of stockholders.

Approved in Anglo-American Land Co. v. Lombard, 132 Fed. 737, 743, 68 C. C. A. 89, under Rev. St. Mo., 1889, § 2839, subd. 9, trust company cannot purchase all stock of another corporation for purpose of controlling its management.

Syl. 4 (IX, 908). Railroads—Alienation of road or franchise.

Approved in Arkansas v. Choctaw etc. R. Co., 134 Fed. 108, denying removal of suit involving right of corporation to purchase property and franchises of another; Pittsburg etc. Ry. Co. v. Dodd, 115 Ky. 211, 72 S. W. 833, conveyance, by company chartered to build and operate bridge, of approach thereto, is void; Muntz v. Algiers etc. Ry. Co., 111 La. 428, 100 Am. St. Rep. 495, 35 So. 627, 64 L. R. A. 222, railroad is liable for personal injuries caused by negligent operation of cars on road by its lessee; Arrison v. Company D, 12 N. D. 559, 97 N. W. 85, corporation organized under statute permitting members of national guard to incorporate for erection of armory, is private corporation, whose property is subject to mechanic's lien; Enid Right of Way etc. Co. v. Lile, 15 Okl. 321, 82 Pac. 811, holding agreement by railroad to locate depot at certain place is void; Matthews v. Seaboard etc. Ry., 67 S. C. 505, 46 S.

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E. 336, 65 L. R. A. 286, holding railroad liable for injuries to one using path over right of way in ignorance of dangers, where railroad had long acquiesced in use of path; Weed v. Gainesville R. R. Co., 119 Ga. 596, 46 S. E. 894, arguendo. See 103 Am. St. Rep. 555, note.

Distinguished in dissenting opinion in Enid Right of Way etc. Co. v. Lile, 15 Okl. 338, 82 Pac. 816, majority holding void agreement by railroad to locate depot at certain place.

Syl. 6 (IX, 911). Executed invalid contract.

Approved in United States Savings & L. Co. v. Convent of St. Rose, 133 Fed. 358, where benevolent corporation authorized to hold stock in other corporation subscribed for building and loan association's stock, from which it borrowed money, and paid dues and interests, it is estopped to plead ultra vires against enforcement of contract.

Syl. 7 (IX, 911). Ultra vires contract partly performed.

Approved in Stealey v. Kansas City, 179 Mo. 408, 78 S. W. 601, where, at time ordinance, directing construction of sidewalks along street passed, street was not within city limits, construction of sidewalk did not estop city from pleading that it was not liable for injuries by defects because it was not required to repair same.

Syl. 8 (IX, 912). Railroad must rescind ultra vires contract.

Approved in Western Maryland R. R. Co. v. Blue Ridge Hotel Co., 102 Md. 332, 111 Am. St. Rep. 373, 62 Atl. 355, 3 L. R. A. (N. S.) 887, where railroad made ultra vires, contract by which it guaranteed interest on bonds of hotel company and received no direct benefit from it, it is not estoppel to plead ultra vires.

101 U. S. 87-92, 25 L. 878, EMPIRE v. DARLINGTON.

Syl. 2 (IX, 914). Consolidation of corporations.

Distinguished in Jones v. Missouri-Edison Electric Co., 144 Fed. 775, reversing 135 Fed. 157, and upholding minority stockholder's right to avoid consolidation of corporations procured by fraud.

101 U. S. 93-97, 25 L. 794, BAST v. FIRST NATIONAL BANK.

Syl. 5 (IX, 915). Parol to vary writing.

Approved in North American Transportation etc. Co. v. Samuels, 146 Fed. 52, admitting parol explanation to show particular kind and quality of goods sold under written contract where writing silent with respect thereto; Farnham Co. v. Southeastern Const. Co., 144 Fed. 990, in action at law on written contract, affidavit of defense setting out contemporaneous verbal agreement, adding term to contract and alleging its breach by plaintiff, states no defense; Anthony v. Rockefeller, 102 Mo. App. 331, 76 S. W. 492, refusing to reform deed so as to except from covenants grantees' right to possession till certain date, together with right to improvements which tenants entitled to remove on ground that tenants' rights known to grantee prior to delivery of deed and that deed delivered on condition it would be subject to such rights.

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101 U. S. 99-107, 25 L. 841, BAKER v. SELDEN.

Syl. 4 (IX, 916). Copyright of illustrated book.

Approved in Burk v. Johnson, 146 Fed. 213, copyright of pamphlet containing articles of association and by-laws of mutual burial association, does not confer on owner exclusive right to organize associations under plan described.

101 U. S. 108-112, 25 L. 899, MEGUIRE v. CORWINE.

Syl. 2 (IX, 917). Illegal contract not actionable.

Approved in Young v. City of Mankato, 97 Minn. 7, 105 N. W. 970, 3 L. R. A. (N. S) 849, freeholders appointed to draft city charter cannot employ and agree to pay one of them as attorney for board; Bass v. Smith, 12 Okl. 488, 71 Pac. 628, refusing to compel conveyance of land under contract whereby plaintiff was to support party for life if he would enter land under homestead laws and convey it to plaintiff; Garst v. Love, 6 Okl. 55, 55 Pac. 22, in suit for pasturage of cattle on plaintiff's inclosed lands, answer alleging land inclosed is government land which plaintiff has unlawfully inclosed for rent states valid defense.

101 U. S. 112-119, 25 L. 782, WASHINGTON MARKET CO. v. HOFFMAN.

Syl. 3 (IX, 919). Statutory construction—Literal interpretation.

Approved in Mottley v. Louisville etc. R. Co., 150 Fed. 411, act of 1906, prohibiting free passes by interstate carriers does not invalidate contract made in 1871, whereby interstate carrier agreed to issue life pass in consideration of release of damages.

101 U. S. 129-135, 25 L. 1046, FIRST NATIONAL BANK v. COUNTY OF YANKTON.

Syl. 2 (IX, 920). Organic law governs territory.

Approved in Allen v. Reed, 10 Okl. 111, 60 Pac. 784, holding void Stat. 1893, c. 23, relating to change of county seats; Kneeland v. Korter, 40 Wash. 363, 82 Pac. 609, 1 L. R. A. (N. S.) 745, Congress had power to grant tide lands between high and low water mark in Washington Territory.

Syl. 3 (IX, 921). Congressional change of territorial statutes.

Approved in United States v. Winans, 198 U. S. 383, 49 L. 1093, 25 Sup. Ct. 662, fishing rights in Columbia river secured to Yakima Indians by treaty of 1859, which provided for extinguishment of Indian title to lands occupied by them, are not subordinate to powers acquired by state of Washington in tide lands on its admission; Brown v. United States, 146 Fed. 977, larceny on Indian reservation in Oklahoma Territory by one not an Indian is crime against United States within jurisdiction of territorial district courts exercising federal jurisdiction.

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101 U. S. 135-143, 25 L. 807, WOOD v. CARPENTER.

Syl. 2 (IX, 922). Limitation statutes favored.

Approved in Louisville etc. R. R. Co. v. Hall, 115 Ky. 576, 74 S. W. 282, holding error to refuse filing of amended answer pleading limitations where offered before reply; Thomas v. Price, 33 Wash. 462, 99 Am. St. Rep. 961, 74 Pac. 564, where in action on note defendant counterclaimed on note made by plaintiff, not error to permit amendment of reply by pleading limitations to note counterclaimed.

Syl. 3 (IX, 923). Suspension of limitations—Concealment of liability.

Approved in Williams v. Neely, 134 Fed. 13, 69 L. R. A. 232, 67 C. C. A. 171, it is not laches for one having equitable defense to note on which litigation is pending to wait till affirmative action at law on defense is barred and until equitable defense is rejected in action on note before seeking to enjoin prosecution of latter action till defense allowed; Lynchburg Cotton Mill Co. v. Travelers' Ins. Co., 140 Fed. 726, arguendo.

Syl. 7 (IX, 923). Limitations—Concealment of fraud—Diligence.

Approved in United States v. Union Bridge Co., 143 Fed. 393, right of United States to require removal of bridge as obstruction to navigation not affected by fact that government made no objection when bridge built; Williamson v. Beardsley, 137 Fed. 470, 69 C. C. A. 615, suit to set aside executor's deed nearly eighteen years after probate of will, over five years after entry of orders of sale, is barred by laches where grounds of attack were defects in proceedings apparent of record; Kansas City etc. Ry. Co. v. Stevenson, 135 Fed. 558, where defendant on resigning presidency of railroad retained title to property in another state donated to aid extension of road, nine years' delay in suing to establish trust is fatal; Burnes v. Burnes, 132 Fed. 495, refusing to set aside, after lapse of twelve years, agreement for diversion of stock as family settlement, where surviving partner threatened to administer estate as surviving partner unless corporation formed and stock divided between heirs; German Sav. Bank v. Des Moines Nat. Bank, 122 Iowa, 745, 98 N. W. 609, where bank cashier executed notes to bank in individual capacity and as treasurer of a company directly to third person with bank's guaranty and bank took them up before maturity, it cannot recover amount paid after four years' delay; Davis v. Boyett, 120 Ga. 651, 48 S. E. 186, father's action for seduction of daughter arises when act of seduction is complete, not when he discovers daughter has been seduced; Bartleson v. Vanderhoff, 96 Minn. 187, 104 N. W. 821, owner of land which agent sold cannot recover damages of agent for fraud, where owner, knowing of resale by vendee and suspecting agent of connivance in resale, refuses, while contract is executory, to avail himself of means of ascertaining truth; Kansas Moline Plow Co. v. Sherman, 3 Okl. 214, 41 Pac. 626, 32 L. R. A. 33, applying principle in holding conveyance fraudulent as to executors.

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Syl. 8 (IX, 925). Limitations—Allegations as to concealment of fraud.

Approved in Kramer v. Gille, 140 Fed. 683, reaffirming rule; Stanwood v. Wishard, 134 Fed. 963, suit in equity by clients against attorney for declaration of trust in property purchased by defendant while acting in their behalf not barred by six years' delay, where complainants resided at distance and had no knowledge of transaction; Thornton v. Mayor etc. of Natchez, 129 Fed. 87, 63 C. C. A. 526, where land conveyed to city for cemetery purposes, eleven years' delay in suing for recovery of land after removal of bodies and improving land for park is fatal; Ryan v. Woodin, 9 Idaho, 531, 75 Pac. 262, applying rule in action to set aside judgment and sheriff's deed based thereon brought after five years from execution of deed; Succession of Dauphin (Choppin v. Dauphin), 112 La. 139, 140, 36 So. 300, mere general allegation in petition, to annul judgment for fraud that discovery made within year is insufficient.

101 U. S. 143-148, 25 L. 901, PELTON v. COMMERCIAL NATIONAL BANK.

Syl. 1 (IX, 926). Validity of state statute for state courts.

Approved in Kane v. Erie R. Co., 133 Fed. 683, 67 C. C. A. 653, 68 L. R. A. 788, determining validity of 87 Ohio Laws, p. 150, § 3, relating to liability of railroads for injuries caused by negligence of fellow-servants.

Syl. 2 (IX, 927). State tax on national bank shares.

Approved in Ankeny v. Blakley, 44 Or. 86, 74 Pac. 488, holding assessment of national bank stock not so excessive as to be discriminatory when compared with assessment of other moneyed capital.

Distinguished in dissenting opinion in San Francisco Nat. Bank v. Dodge, 197 U. S. 112, 113, 49 L. 687, 688, 25 Sup. Ct. 384, majority holding discrimination against national banks results from taxation of national bank shares under Cal. Pol. Code, §§ 3608-3610, at market value, though franchise value not considered in assessment state banks' property.

Syl. 3 (IX, 928). Restraining tax on bank shares.

Approved in Bardrick v. Dillon, 7 Okl. 552, 54 Pac. 790, enjoining, as to excess, tax levied in excess of true value of property where amount due on true cash valuation is tendered before suit.

Distinguished in Chicago etc. Ry. Co. v. State, 128 Wis. 626, 108 N. W. 575, unintentional omissions in assessing property for taxation referable to mere error of judgment do not invalidate tax.

101 U. S. 153-164, 25 L. 903, CUMMINGS v. MERCHANTS' NATIONAL BANK.

Syl. 3 (IX, 929). Equity—Adequate law remedy.

Approved in Gray v. Stiles, 6 Okl. 470, 49 Pac. 1088, injunction lies against county treasurer to enjoin issuance of warrant to sheriff to enforce collection of taxes claimed to be illegally levied.

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Syl. 4 (IX, 930). Federal equity—State statutes.

Approved in Ames Realty Co. v. Big Indian Min. Co., 146 Fed. 173, 175, enforcing remedy given by Mont. Civ. Code, § 1891, providing that in actions over water rights plaintiff may join all persons diverting water from same source and court may in one judgment settle all rights; Frank v. Butler County, 139 Fed. 126, where mandamus recognized by state law for review of action of state auditor in refusing to register county aid bonds, remedy available to nonresident suing in federal court; Humes v. City of Little Rock, 138 Fed. 933, enforcing Arkansas statute authorizing injunction against unauthorized assessments and taxes by municipalities or local tribunals, boards or officers; Barber Asphalt Pav. Co. v. Morris, 132 Fed. 949, 67 L. R. A. 761, 66 C. C. A. 55, upholding federal jurisdiction over action on claim against Duluth, without presenting same to council, though charter provides for appeals from actions on claims to St. Louis court and prohibits payment of claims pending such appeals.

Syl. 5 (IX, 931). Enforcing state equitable remedy.

Approved in Mathews Slate Co. v. Mathews, 148 Fed. 494, denying federal jurisdiction over suit under Rev. Laws Mass. c. 159, § 3, cl. 7, giving supreme and superior courts jurisdiction in equity of suits by creditors to apply in payment of debt property of debtor which cannot be attached or taken on execution in action at law; McKnight v. Dudley, 148 Fed. 206, upholding suit, under Rev. St. Ohio 1906, § 5848, to restrain collection of taxes on credits, where question at issue is as to legality of tax, complainant claiming not to have been resident of county.

Syl. 6 (IX, 931). Injunction against discrimination in taxation.

Approved in San Francisco Nat. Bank v. Dodge, 197 U. S. 75, 49 L. 672, 25 Sup. Ct. 384, national banks discriminated by assessment of national bank shares under Cal. Pol. Code, §§ 3608-3610, at market value; Southern Ry. Co. v. Greensboro Ice etc. Co., 134 Fed. 93, upholding federal jurisdiction to enjoin enforcement of order of state corporation commission alleged to interfere with interstate commerce.

Distinguished in dissenting opinion in San Francisco Nat. Bank v. Dodge, 197 U. S. 112, 113, 49 L. 687, 688, 25 Sup. Ct. 384, majority holding discrimination against national banks results from taxation of national bank shares under Cal. Pol. Code, §§ 3608-3610, at market value, though franchise value not considered in assessment of state banks' property.

Syl. 9 (IX, 933). Statutes—Unfaithful administration.

Approved in Michigan etc. R. R. Co. v. Powers, 201 U. S. 301, 50 L. 765, 26 Sup. Ct. 466, affirming Michigan R. R. Tax Cases, 138 Fed. 242, and upholding Mich. Pub. Acts 1901, Act No. 173, authorizing taxation of railroad property at average rate of taxation imposed on other property.

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Syl. 11 (IX, 933). Enjoining illegal tax as to excess.

Approved in Bardrick v. Dillon, 7 Okl. 552, 54 Pac. 790, enjoining, as to excess, tax levied in excess of true value of property where amount due on true cash valuation is tendered before suit.

101 U. S. 164-169, 25 L. 860, UNITED STATES v. LAWSON.

Syl. 4 (IX, 934). Voluntary payments—Protest.

Approved in State v. Murphy, 128 Wis. 212, 107 N. W. 474, determining right to plead immunity from prosecution when one has testified before grand jury.

101 U. S. 170-174, 25 L. 862, UNITED STATES v. ELLSWORTH.

Syl. 2 (IX, 934). Voluntary payments.

Approved in State v. Murphy, 128 Wis. 212, 107 N. W. 474, determining right to plead immunity from prosecution where one has testified before grand jury.

101 U. S. 174-181, 25 L. 1048, WRIGHT v. BLAKESLEE.

Syl. 3 (IX, 935). Succession tax—Penalty exclusive.

Approved in Schafer v. Craft, 144 Fed. 909, Rev. St., § 3176, is not applicable to collection of special taxes imposed by oleomargarine act of 1886, and fifty per cent penalty against dealer not paying special tax is unwarranted.

Syl. 4 (IX, 935). Recovery of illegal tax—Protest.

Approved in Kahn v. Herold, 147 Fed. 580, where, at time executor paid revenue inheritance tax on life estate under protest, he did not know life tenant had died, payment not voluntary.

101 U. S. 181-184, 25 L. 907, PEOPLE'S BANK v. NATIONAL BANK.

Syl. 5 (IX, 936). Note guaranteed by bank officer—Ratification.

Approved in German Sav. Bank v. Des Moines Nat. Bank, 122 Iowa, 741, 98 N. W. 608, where notes given to bank by cashier in his individual capacity and as treasurer of a company were sold by cashier, and proceeds retained by bank, it ratified cashier's acts.

101 U. S. 184-187, 25 L. 838, AYERS v. CHICAGO.

Syl. 3 (IX, 937). Removal—Separable controversy.

Distinguished in Boatmen's Bank v. Fritzlen, 135 Fed. 661, 662, 68 C. C. A. 288, upholding removal on ground of separable controversy.

101 U. S. 188-196, 25 L. 786, STEAM ENGINE CO. v. HUBBARD.

Syl. 1 (IX, 938). Statutes—Annual statements by corporate officers.

Distinguished in Starkweather v. Brown, 25 R. I. 148, 55 Atl. 203, stockholders in manufacturing corporation having no factory in state are liable under stockholder's liability imposed by Pub. St., c. 155, for failure to file returns as required by § 11.

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101 U. S. 205-215, 25 L. 885, HATCH v. DANA.

Syl. 3 (IX, 940). Creditor's bill—Unpaid stock subscription.

Distinguished in Turner v. Fidelity Loan Concern, 2 Cal. App. 140, 83 Pac. 69, creditor of corporation cannot sue stockholder on subscription without making all stockholders parties or excusing absence of missing ones; Turner v. Fidelity Loan Concern, 2 Cal. App. 138, 83 Pac. 69, creditors of corporation may sue stockholder directly for statutory proportion of corporate debts only, but cannot enforce subscription liability otherwise than by suit against corporation.

Syl. 7 (IX, 941). Enforcement of unpaid stock subscription—Calls.

Approved in Meyer v. Ruby-Trust Min. etc. Co., 192 Mo. 186, 90 S. W. 826, in action by creditor to enforce unpaid stock subscriptions, it is immaterial that some of original defendants died pendente lite and that suit has not been revived against them; Chilberg v. Silbenbaum, 41 Wash. 666, 84 Pac. 599, right of action by creditor of corporation to enforce unpaid stock subscriptions accrues on its insolvency, and when it disposes of all assets, and no judgment against corporation is necessary.

Syl. 9 (IX, 941). Creditor's bill by corporation's judgment creditor.

Approved in Jahn v. Champagne Lumber Co., 147 Fed. 633, bill by judgment creditor of dissolved corporation on behalf of himself and other creditors, against stockholders whom it seeks to hold as trustees of property, is not multifarious because it also prays accounting of amount due on stock subscriptions; Turner v. Fidelity Loan Concern, 2 Cal. App. 140, 83 Pac. 69, creditor of corporation cannot sue stockholder on subscription without making all stockholders parties or excusing absence of missing ones.

101 U. S. 216-218, 25 L. 864, TERRY v. LITTLE.

Syl. 1 (IX, 943). Stockholders' liability purely statutory.

Approved in Abbott v. Goodall, 100 Me. 234, 60 Atl. 1032, creditors of insolvent Colorado corporation cannot maintain equity suit on behalf of themselves and other creditors against Maine stockholders alone to enforce double liability under Colorado act of 1885.

Syl. 2 (IX, 943). Enforcement of bank stockholders' liability.

Approved in Miller v. Clifford, 133 Fed. 886, 67 C. C. A. 52, in equity suit on behalf of all creditors of insolvent bank in Colorado against several stockholders to enforce double liability under Colorado statute, requiring them to pay full amount of liability to be applied pro rata to debts, there is no separable controversy as to any single defendant; Clark v. Knowles, 187 Mass. 38, 105 Am. St. Rep. 376, 72 N. E. 353, suit in equity by creditors of Colorado corporation on behalf of themselves and others to enforce Massachusetts stockholders' double liability under Colorado act of 1885, is not maintainable; Hazlett v. Woodhead, 27 R. I. 511, 63 Atl. 954, under Nebraska Const. 1875, art. 11b, § 7, receiver of Nebraska bank must include nonresident stockholders in equity suit in Nebraska to deter-

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mine stockholders' liability; Miller v. Smith, 26 R. I. 149, 150, 151, 58 Atl. 635, 636, 66 L. R. A. 473, refusing to entertain suit in equity by creditors of Colorado corporation in behalf of themselves and other creditors to enforce double stockholders' liability under Colorado statute; Harrison v. Remington Paper Co., 140 Fed. 388, arguendo.

101 U. S. 225-231, 25 L. 908, JONES v. CLIFTON.

Syl. 1 (IX, 945). Gift to wife—Claims of creditors.

Approved in Savage v. Savage, 141 Fed. 350, following rule; Aldous v. Olverson, 17 S. D. 200, 95 N. W. 920, conveyance of property by husband to wife, duly recorded and not made with intent to defraud subsequent creditors, cannot be complained of by them irrespective of intent as to existing creditors.

Syl. 2 (IX, 945). Deed to wife without trustee.

Approved in Luhrs v. Hancock, 6 Ariz. 345, 57 Pac. 606, upholding deed from wife to husband.

101 U. S. 231-239, 25 L. 797, MAY v. SLOAN.

Syl. 3 (IX, 946). Statute of frauds—Denial of parol agreement.

Distinguished in Graham v. Heinrich, 13 Okl. 120, 74 Pac. 331, where one sets up contract as legal and prays relief from stipulations thereof, and answer and cross-petition pray enforcement thereof, and specific performance granted, it is too late after appeal for plaintiff to elect to declare contract void within statute of frauds.

Syl. 4 (IX, 946). "Trade" includes commerce.

Approved in Pocono etc. Ice Co. v. American Ice Co., 214 Pa. St. 647, 64 Atl. 400, corporation created to erect dam and cut, store and sell ice is trading corporation within act of 1881, authorizing trading corporations to wind up affairs on expiration of charter.

101 U. S. 240-247, 25 L. 850, BANK OF AMERICA v. BANKS.

Syl. 4 (IX, 947). Estoppel of married woman by contract.

Approved in Burns v. Cooper, 140 Fed. 286, covenants of married woman in joint mortgage with husband binding after-acquired property do not estop her from claiming interest in property described in mortgage acquired after mortgage freed from its lien.

Syl. 5 (IX, 947). Recitals in collateral writings as estoppel.

Approved in Summerfield v. White, 54 W. Va. 317, 46 S. E. 157, recitals of description in deed did not estop grantor from showing corner mentioned therein is not certain rock claimed by opponent.

Syl. 6 (IX, 947). Estoppel by deed.

Approved in In re Salmon, 143 Fed. 402, Missouri act of 1897, relating to liquidation of banks was insolvent law suspended by bankruptcy act of 1898, and participation by creditors in proceedings

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thereunder did not estop them from instituting bankruptcy proceedings against debtors.

101 U. S. 247-256, 25 L. 826, WATT v. STARKE.

Syl. 1 (IX, 948). Equity—Bill of exceptions—Feigned issue.

Approved in In re Neasmith, 147 Fed. 163, where issues in bankruptcy proceedings submitted to jury independent of Bankr. Act, § 19a, bill of exceptions is of no value.

101 U. S. 256-260, 25 L. 865, LEGGETT v. AVERY.

Syl. 4 (IX, 949). Patents—Disclaimer.

Approved in Welsback Light Co. v. Cremo etc. Light Co., 145 Fed. 524, construing Heald patent No. 423,317, for appliance for use with gas lamps; Victor Talking Mach. Co. v. American Graphophone Co., 145 Fed. 191, construing Berilner patent No. 548,623, for duplicate sound records; Rembert etc. Compress Co. v. American Cotton Co., 129 Fed. 369, 64 C. C. A. 25, limiting Rembert patent No. 441,022, for method of baling cotton, and holding it not infringed by machine of Graves patent No. 473,144.

101 U. S. 260-263, 25 L. 910, SIMMONS v. WAGNER.

Syl. 4 (IX, 951). Law certificate—Right to patent.

Approved in United States v. Detroit Timber etc. Co., 200 U. S. 335, 50 L. 505, 26 Sup. Ct. 282, purchaser from patentees for value and without notice of entryman's fraud is entitled to protection as bona fide purchaser, though he acquired interest in lands under contract for sale of standing timber before patents issued.

101 U. S. 263-273, 25 L. 809, WEST v. SMITH.

Syl. 5 (IX, 952). Parol to vary writing.

Approved in Barcus v. Gates, 130 Fed. 367, where written contract for employment of attorney on contingency is uncertain as to character of services or manner of payment, parol evidence is admissible to show surrounding circumstances and situation of parties and nature of litigation.

Syl. 6 (IX, 952). Offers of compromise as evidence.

Approved in dissenting opinion in Misner v. Strong, 181 N. Y. 177, 73 N. E. 970, in suit to establish ownership in undivided interest in ship and for accounting of earnings, admission of evidence that one of defendants had offered compromise is not reversible error where defendant testified to same effect.

• Distinguished in Chesapeake etc. Ry. Co. v. Stock, 104 Va. 102, 51 S. E. 163, admitting offer of compromise by railroad in action for loss of goods in transit where offer not made with caution that it is confidential and without prejudice.

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101 U. S. 274-277, 25 L. 790, BRODER v. NATOMA WATER & MIN. CO.

Syl. 2 (IX, 953). Irrigation of arid lands.

Approved in Hoge v. Eaton, 135 Fed. 414, appropriation of water in Wyoming from stream which rises in Colorado for irrigating lands in Wyoming is valid as against subsequent appropriation in Colorado from same stream for irrigating lands in Colorado; Boise Irr. etc. Co. v. Stewart, 10 Idaho, 50, 77 Pac. 28, Water Appropriation act of 1903, §§ 4, 5, is not void as vesting judicial power in state engineer; Meng v. Coffee, 67 Neb. 518, 108 Am. St. Rep. 712, 93 N. W. 719, appropriation of water by squatter's rights does not, by virtue of Rev. St. U. S., § 2339, give appropriator for period less than ten years exclusive right as against other settlers on same stream; Crawford Co. v. Hathaway, 67 Neb. 359, 108 Am. St. Rep. 675, 93 N. W. 792, under irrigation act of 1895, riparian owner whose property rights are impaired is entitled to compensation for injuries actually sustained; Willey v. Decker, 11 Wyo. 521, 100 Am. St. Rep. 939, 73 Pac. 217, discussing effect of subsequent legislation on right of prior appropriation of water; Morris v. Bean, 146 Fed. 427, arguendo.

101 U. S. 285-289, 25 L. 785, JEFFREY v. MORAN.

Syl. 3 (IX, 956). Judgment for tort as prior lien.

Approved in Julian v. Central Trust Co., 193 U. S. 109, 48 L. 638, 24 Sup. Ct. 399, applying rule under N. C. Code, § 1255, making liens for judgments for torts superior to mortgages of corporations.

101 U. S. 289-300, 25 L. 932, PACIFIC R. R. CO. v. KETCHUM.

Syl. 2 (IX, 956). Attorney's authority to bind client.

Approved in Harniska v. Dolph, 133 Fed. 160, 66 C. C. A. 224, where attorney for defendant admitted in open court at trial that defendant could not sustain defense and that plaintiff entitled to relief, and consented to judgment for latter, authority presumed.

Syl. 3 (IX, 957). Remedy for attorney's fraud.

Approved in Nelson v. Meehan, 2 Alaska, 490, where judgment obtained by fraud and perjury was affirmed on appeal, and pending disposition of case in district court defendants, by motion and affidavit, disclosed fraud, court could vacate judgment.

Syl. 8 (IX, 957). Diverse citizenship—Arrangement of parties.

Approved in Boatmen's Bank v. Fritzlen, 135 Fed. 658, 68 C. C. A. 288, following rule; dissenting opinion in German Sav. & Loan Soc. v. Tull, 136 Fed. 11, 69 C. C. A. 1, majority upholding federal jurisdiction over partition suit, though questions may arise between plaintiffs who are citizens of same state, where bill does not disclose controversy rendering re-alignment of parties necessary.

(IX, 956.) Miscellaneous. Cited in Weed v. Gainesville R. R. Co., 119 Ga. 596, 46 S. E. 894.

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101 U. S. 306-319, 25 L. 999, KETCHUM v. ST. LOUIS.

Syl. 1 (IX, 959). Lien—Fund set apart for creditor.

Approved in In re Porterfield, 138 Fed. 196, upholding validity of lien where bankrupt indebted to wife for money loaned agreed by parol to execute trust deed to secure debt, and within four months of bankruptcy executed second deed of trust in consideration of her surrendering dower right in land, and on condition that debt be secured by such second deed.

Syl. 4 (IX, 959). Equity—Enforcement of liens.

Approved in Union Trust Co. v. Bulkeley, 150 Fed. 513, parol assignment of accounts and bills receivable which should be acquired to secure one becoming indorser to enable assignor to raise money for business creates valid lien against assignor's bankruptcy trustee; Wilder v. Watts, 138 Fed. 432, where bankrupt, prior to insolvency, arranged to borrow money to buy goods and assign insurance to lenders as security, there was equitable assignment of policies, though not delivered when issued nor actually assigned till after loss and insolvency.

101 U. S. 320-332, 25 L. 955, SMITH v. AYER.

Syl. 2 (IX, 960). Knowledge of attorney is client's.

Approved in In re Pease, 129 Fed. 455, where trust company through its attorney, who was also attorney for creditors of merchant, made loan with which certain creditors paid in full and took chattel mortgage, under which stock sold next day, mortgage was void under Bankr. Act, § 67e.

101 U. S. 332-337, 25 L. 1024, UNION WATER METER CO. v. DESPER.

Syl. 1 (IX, 962). Patent for combination—Infringement.

Approved in Conroy v. Penn Elec. & Mfg. Co., 146 Fed. 752, holding Wright & Curry patent No. 631,033, for mirror, infringed by Conroy mirror; Brookfield v. Elmer Glass Wks., 132 Fed. 313, Kribs patent No. 542,565, for improvement in presses for making glass screw insulators, not infringed by machine of Duffield patent No. 723,589.

Syl. 3 (IX, 962). Patent for combination—Equivalent.

Approved in National Cash Register Co. v. Union Comp. Mach. Co., 143 Fed. 344, construing Kock cash register patent No. 398,625; Levy v. Harris, 130 Fed. 715, 65 C. C. A. 113, Levy patent No. 664,564, for feather quill grinding machine not infringed.

101 U. S. 337-341, 25 L. 960, MEMPHIS ETC. R. R. CO. v. TENNESSEE.

Syl. 1 (IX, 963). Suability of state.

Approved in Hollister v. State, 9 Idaho, 13, 71 Pac. 542, Sess. Laws 1899, p. 381, § 13, authorizes suit against state for condemnation of state lands for public use.

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Syl. 2 (IX, 963). Obligation of contract—Suability of state.

Approved in In re Hoople, 179 N. Y. 312, 72 N. E. 230, right to refund amount of transfer tax illegally assessed given by Laws 1896, p. 871, c. 908, § 225, as amended in 1900, is barred if at time demand for refund made action for same would be barred as between private parties.

101 U. S. 341-346, 25 L. 1010, LANGFORD v. UNITED STATES.

Syl. 3 (IX, 964). Use and occupation by government.

Approved in O'Reilly De Camara v. Brooke, 135 Fed. 390, holding American military governor of Cuba liable for depriving Spanish citizen of his property without compensation; Christie-Street Com. Co. v. United States, 129 Fed. 508, denying federal jurisdiction over petition alleging that tax sought to be recovered was exacted by threats and paid under duress.

Distinguished in Christie Street Com. Co. v. United States, 136 Fed. 329, 69 C. C. A. 464, claim to recover internal revenue taxes illegally exacted may be enforced by action directly against United States.

101 U. S. 352-362, 25 L. 888, AMERICAN ETC. CHRISTIAN UNION v. YOUNT.

Syl. 1 (IX, 965). Holding land by foreign corporation.

Approved in Julian v. Central Trust Co., 193 U. S. 107, 48 L. 637, 24 Sup. Ct. 399, property of North Carolina railroad covered by mortgage is not liable for debts accruing after foreclosure sale to nonresident company because of failure of latter to become domestic corporation as provided by N. C. Code, §§ 697, 698, 1036, 2005; Succession of Hasling, 114 La. 296, 38 So. 174, validity of will made in Louisiana bequeathing land in Mississippi depends on law of Mississippi.

Syl. 2 (IX, 965). Exercise of powers by foreign corporation.

Approved in Swing v. Weston Lumber Co., 140 Mich. 350, 103 N. W. 818, mutual insurance contract on property in state between resident and foreign corporation which had not complied with state laws, made through agent who had placed part of insurance with agent outside of state who wrote policy in question, cannot be made basis of assessment by company's trustee against insured.

101 U. S. 362-369, 25 L. 813, KAIN v. GIBBONEY.

Syl. 2 (IX, 967). Charitable bequests—Certainty of objects.

Approved in Miller v. Ahrens, 150 Fed. 657, trust created by will for benefit of foreign religious corporation involving devise of land in West Virginia is void; dissenting opinion in Danforth v. Oshkosh, 119 Wis. 290, 97 N. W. 268, majority holding where land devised to trustees to be conveyed to city for purpose of constructing and main-

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taining public library thereon, on condition that deed from trustees should contain condition that title should revert to heirs of testator on land ceasing to be used for library, there was no suspension of power of alienation.

101 U. S. 370-383, 25 L. 855, PHELPS v. HARRIS.

Syl. 1 (IX, 967). Quieting title—Plaintiff's title.

Approved in dissenting opinion in Logan v. Ward, 58 W. Va. 378, 52 S. E. 402, majority holding bill to remove cloud from title not maintainable by owner of land in actual possession where land entered on by adverse claimant.

Syl. 4 (IX, 968). Power to sell and dispose—Partition.

Approved in People v. Chicago, 216 Ill. 541, 75 N. E. 239, property received in exchange for property granted for use of schools and rents of property so received are not taxable.

101 U. S. 384-391, 25 L. 982, THE SABINE.

Syl. 2 (IX, 968). Essentials of salvage claim.

Approved in Spaulding v. Alaska Com. Co., 1 Alaska, 501, where libelants knowing barges had been ashore by wind at point designated by master, reached there ahead of owner's employees, went aboard dryshod and attached line on shore, they are not entitled to salvage.

Syl. 4 (IX, 969). Salvage suits in rem or in personam.

Approved in United States v. Cornell Steamboat Co., 202 U. S. 193, 50 L. 991, 26 Sup. Ct. 648, upholding recovery of salvage on duties collected by government on cargo afterward saved from fire while on lighter in possession of custom officials; Silvey v. Tift, 123 Ga. 808, 51 S. E. 750, 1 L. R. A. (N. S.) 386, where petition by creditors in involuntary bankruptcy alleged preferential transfer to creditor within four months of petition, and trustees such transferees for preference after adjudication, adjudication did not estop defendants from setting up rescission of sale of goods to bankrupt prior to adjudication on ground of misrepresentation.

Syl. 9 (IX, 969). Nature of salvor's remedy.

Approved in Spaulding v. Alaska Com. Co., 1 Alaska, 498, salvor of property which has been taken from his possession by owner may maintain suit in personam against owner for salvage.

101 U. S. 392-397, 25 L. 1050, WHITNEY v. WYMAN.

Syl. 1 (IX, 970). Agent's liability—Contract in principal's name.

Approved in Triplett v. Jackson, 130 Iowa, 411, 106 N. W. 955, where agent having three tracts for sale on commission employed plaintiff to find purchaser for two, agreeing to pay $150 therefor, and plaintiff found purchaser but owner refused to sell unless sale

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included all land, and agent said he would pay plaintiff to find such purchaser, agent liable for compensation of plaintiff for finding purchaser; Hicks v. Kenan, 139 N. C. 344, 51 S. E. 943, construing contract made by agent as that of principal.

Syl. 3 (IX, 970). Ratification of corporation's contract.

Approved in Tryber v. Girard Creamery etc. Co., 67 Kan. 495, 73 Pac. 85, corporation not adopting contracts of incorporators not liable therefor merely because it takes title to and enjoys property produced under such contract where incorporators acted on individual responsibility; Tuttle v. Tuttle, 101 Me. 292, 64 Atl. 499, corporation not liable for services performed for it prior to incorporation under contract made by its promoters where directors did not ratify contract; Esper v. Miller, 131 Mich. 339, 91 N. W. 614, where corporation promoters who contributed money to form corporation and were to get stock in exchange agreed with realty broker that if he got title to certain land they would take it from him, and corporation took assignment of option from him, promoters not liable on contract; Chesapeake etc. Ry. Co. v. Deepwater Ry. Co., 57 W. Va. 666, 50 S. E. 900, determining that survey of route ordered by railroad stockholders adopted by directors.

Syl. 7 (IX, 971). Agent's liability—Principal known.

Approved in Hall's Safe Co. v. Herring etc. Safe Co., 146 Fed. 40, 41, contract by corporation on sale of its business and goodwill that it will not compete with purchaser does not individually bind stockholder and officer who acted for corporation; Kessel v. Austin Min. Co., 144 Fed. 861, contract purporting in its body to be that of corporation and signed by one as its manager, he having authority to do so, is contract of corporation; Frambach v. Frank, 33 Colo. 532, 81 Pac. 248, where contract provided that plaintiff convey to defendant all interest in mill and defendant agreed that if, acting for himself or as agent for certain corporation, he purchased mill at sale to be held in future, he would pay plaintiff for his interest if purchase made for corporation, obligation was that of corporation.

101 U. S. 403-407, 25 L. 866, INTERNATIONAL BANK v. SHERMAN.

Syl. 2 (IX, 972). Bankruptcy—Vesting of title in assignee.

Approved in Van Kirk v. Vermont Slate Co., 140 Fed. 45, where bona fide assignee of insurance policies pledged over four months prior to bankruptcy assigned policies after adjudication, trustee's rights not affected; In re Shoesmith, 135 Fed. 688, 68 C. C. A. [illegible] where bankruptcy court had jurisdiction of parties and subject matter, court may permit amendment of involuntary petition more than four months after last fraudulent transfer alleged as act of bankruptcy; Moulton v. Coburn, 131 Fed. 204, 66 C. C. A. 90, to entitle

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less than three creditors to maintain petition in involuntary bankruptcy, it must appear that there were less than twelve creditors at date of filing petition.

Syl. 5 (IX, 973). Bankruptcy—Meddling with property after petition.

Approved in In re Home Discount Co., 147 Fed. 551, where creditor of bankrupt took assignment of future wages to secure loan and took no steps to get wages prior to adjudication but filed notice of assignment afterward, referee could compel lender to withdraw notice of assignment; In re Billing, 145 Fed. 398, notice to creditors of filing petition in involuntary bankruptcy is unnecessary; State Bank of Chicago v. Cox, 143 Fed. 93, bankruptcy trustee may recover money obtained by creditors by attachment between date of filing of bankruptcy petition and adjudication; Williamson v. Goodfellow-Brooks Shoe Co., 141 Fed. 220, upholding malicious prosecution for institution of bankruptcy proceedings maliciously and without probable cause, though not accompanied by actual seizure of property; In re Benedict, 140 Fed. 60, where receiver appointed in involuntary bankruptcy proceedings, district court of another district in which property of bankrupt situated may appoint ancillary receiver; In re Granite City Bank, 137 Fed. 820, 70 C. C. A. 316, bankruptcy court may direct sale of property of bankrupt which is outside district; In re Mertens, 134 Fed. 105, where creditors of bankrupt firm held policy on life of one of members as security, he could not sell same to himself at pretended auction for one-sixth of face value, after petition in bankruptcy against firm and before adjudication; In re Ducker, 133 Fed. 775, seller of merchandise to bankrupt under unrecorded conditional sale not entitled to priority against subsequent creditors without notice or lien; In re Smith, 132 Fed. 303, goods in possession of retailer for resale purchased under contract, reserving title in seller until full payment, pass to bankruptcy trustee; In re Moody, 131 Fed. 528, upholding jurisdiction of bankruptcy court to take possession by receiver of property alleged to have been fraudulently transferred by bankrupt and to determine ownership; In re Mertens, 131 Fed. 515, where bankrupt's trustee took possession of property at time of filing petition and seller of property to bankrupt did not elect to rescind for fraud until after bankruptcy proceedings started, trustee not liable for conversion in selling goods under order of court; In re Tweed, 131 Fed. 358, applying rule where bankrupt held property under conditional contract of purchase, conditions of which are void for failure to comply with state statutes; French v. White, 78 Vt. 95, 62 Atl. 36, 2 L. R. A. (N. S.) 804, property which vests in trustee of bankrupt is not attachable in state court; English v. Ross, 140 Fed. 635, and In re Porterfield, 138 Fed. 195, both arguendo.

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101 U. S. 407-417, 25 L. 1015, COUNTY OF LIVINGSTON v. DARLINGTON.

Syl. 1 (IX, 973). Invalidity of statute must be clear.

Approved in Ex parte Kair, 28 Nev. 146, 80 Pac. 466, upholding act of 1903, imposing penalty on person working more than eight hours a day in mine, smelter or ore-mill; City of Guthrie v. Territory, 1 Okl. 198, 31 Pac. 193, 11 L. R. A. 418, upholding power of legislature to provide for payment by village corporation which succeeds provisional city government of debts of latter.

101 U. S. 417-426, 25 L. 1052, MOHR v. MANIERRE.

Syl. 3 (IX, 975). Guardian's sale—Collateral attack.

Approved in Threadgill v. Colcord, 16 Okl. 470, 85 Pac. 710, purchaser at master's sale under decree in suit to which he is party cannot collaterally attack decree for irregularities.

Syl. 5 (IX, 976). Notice in legal proceedings.

Approved in White v. Martin, 2 Alaska, 501, upholding notice by publication to lunatic who wanders away of time and place of hearing application for guardianship.

101 U. S. 433-438, 25 L. 937, SOUTH CAROLINA v. GAILLARD.

Syl. 2 (IX, 977). Repeal of special statute pending suit.

Approved in Scott v. Jenkins, 46 Fla. 529, 35 So. 105, applying rule to foreclosure where pending suit one of defendants died and administrator made party after repeal of statute making realty assets in hands of administrator; Terry v. McClung, 104 Va. 601, 52 S. E. 356, where no final order establishing road applied for was made prior to act of 1888, depriving county court of Highland county of jurisdiction in road cases, proceedings lapsed.

101 U. S. 439-443, 25 L. 1055, WHEELER v. INSURANCE CO.

Syl. 2 (IX, 978). Mortgagee's right to insurance proceeds.

Approved in Wilder v. Watts, 138 Fed. 431, where debtor made equitable assignment of policies to be issued as security for loans but failed to make actual assignment of policies until after loss when he was insolvent, assignment not act of bankruptcy.

101 U. S. 443-452, 25 L. 1057, BROOKS v. BURLINGTON ETC. RY. CO.

Syl. 5 (IX, 980). Mortgages—Lien of building contractor.

Approved in Hammond v. Darlington, 109 Mo. App. 343, 84 S. W. 449, one purchasing lease of land on which buildings are in course of erection for lessee is chargeable with notice that mechanic's lien may be asserted for labor and materials entering into construction.

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101 U. S. 465-471, 25 L. 987, SILLIMAN v. UNITED STATES.

Syl. 1 (IX, 982). What is duress.

Approved in Earle v. Berry, 27 R. I. 229, 230, 61 Atl. 674, mere threat to withhold payment of debt except on giving of receipt that amount paid was all that was due is not duress.

101 U. S. 473-479, 25 L. 800, MARQUEZ v. FRISBIE.

Syl. 2 (IX, 983). Judicial interference with land office.

Approved in Fitzgerald v. Keith, 5 Okl. 264, 48 Pac. 111, and Adams v. Couch, 1 Okl. 34, 26 Pac. 1015, both following rule; Humbird v. Avery, 195 U. S. 504, 49 L. 297, 25 Sup. Ct. 123, refusing, in advance of final action of Land Department, to determine rights of grantees from Northern Pacific of indemnity lands and settlers; Jones v. Hoover, 144 Fed. 220, upholding equity jurisdiction to review acts of Land Department in construing law so as to give possession, where possession essential to complete purchase of public lands; Thompson v. Basler, 148 Cal. 649, 84 Pac. 162, where homestead claimant brought ejectment against mining claimant, who made location after plaintiff obtained receiver's certificate, defendant cannot show plaintiff had not complied with requirements of residence and cultivation; Le Ferere v. Amonson, 11 Idaho, 47, 81 Pac. 72, denying jurisdiction to determine whether lands are mineral or not, while controversy pending before Land Department; Sims v. Morrison, 92 Minn. 346, 100 N. W. 90, where one filed homestead entry and submitted final proof and then sold all standing timber to plaintiff, and contest filed prior to final proof decided against contestant, but subsequent to contract contest amended and then homesteader relinquished entry and contestant entered land under timber act, plaintiff cannot impress land with trust; Tiernan v. Miller, 69 Neb. 767, 96 N. W. 662, party entering public lands as homestead cannot be enjoined from exercising right of possession by one who, without right, held prior possession; Wilbourne v. Baldwin, 5 Okl. 280, 47 Pac. 1050, refusing to enjoin Indian agent from ejecting homesteader from Indian lands; McDaid v. Territory, 1 Okl. 102, 30 Pac. 441, under Act Cong. May 14, 1900, relating to townsite entries, after issuance of patent to trustees, no appeal lies from decision of trustees awarding land to one of several contestants; Laramie Nat. Bank v. Steinhoff, 11 Wyo. 307, 71 Pac. 994, where one in possession of land under certificate of purchase issued by Land Department sues claimant under entry, before patent issued, to determine adverse interests, court can determine right to possession but not title; dissenting opinion in Sproat v. Durland, 2 Okl. 52, 35 Pac. 888, majority holding homestead claimant may be enjoined by adverse claimant on answer and cross-complaint from interfering with possession, and injunction may be given effect of writ of possession; Thompson v. Ferry, 6 Ariz. 306, 56 Pac. 743, arguendo.

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Distinguished in Woodruff v. Wallace, 3 Okl. 361, 365, 41 Pac. 359, 361, granting injunction to give possession to successful claimant in contest before Land Department.

Syl. 3 (IX, 984). Judicial dealing prior to patent.

Approved in Reaves v. Oliver, 3 Okl. 68, 41 Pac. 355, and Pappe v. Trout, 3 Okl. 264, 41 Pac. 399, both following rule; Jones v. Hoover, 144 Fed. 222, upholding equity jurisdiction to review acts of Land Department in construing law so as to give possession where possession is essential to complete purchase of public lands; Heine v. Roth, 2 Alaska, 423, granting injunction to prevent trespass on possessory rights of homesteader; Shy v. Brockhause, 7 Okl. 39, 54 Pac. 307, town lot may, before legal title passes from government, maintain ejectment against one in possession as his tenant; Barnes v. Newton, 5 Okl. 432, 48 Pac. 192, successful party in Land Department contest may enjoin adversary from interfering with possession and from further occupancy of disputed premises.

Distinguished in dissenting opinion in Barnes v. Newton, 5 Okl. 463, 49 Pac. 1082, majority holding successful party in Land Department contest may enjoin opponent from interfering with possession and from further occupancy of premises.

Syl. 4 (IX, 984). Conclusiveness of land decisions.

Approved in Woodruff v. Wallace, 3 Okl. 378, 41 Pac. 365, following rule; Le Fevre v. Amonson, 11 Idaho, 48, 81 Pac. 72, denying jurisdiction to determine whether or not lands are mineral, while claims are pending before Land Department; Tiernan v. Miller, 69 Neb. 768, 96 N. W. 663, homesteader cannot be enjoined from exercising right of possession by one who, without right, held prior possession; Cagle v. Dunham, 14 Okl. 615, 78 Pac. 562, refusing to set aside Land Department decision on contest for perjury committed before department; Oklahoma City v. Hill Bros., 6 Okl. 129, 50 Pac. 247, parties entering lands in violation of Act Cong., March 2, 1889, and occupied lots on townsite and were unlawfully dispossessed while in occupancy of buildings thereon by city authorities may sue for trespass; Barnes v. Newton, 5 Okl. 431, 48 Pac. 192, successful party in Land Department contest may enjoin adversary from interfering with possession and from further occupying disputed premises; Calhoun v. Violet, 4 Okl. 325, 47 Pac. 481, finding of Land Department that entryman entered and settled on lands thrown open under Act of Cong., March 2, 1889, during inhibited time, is conclusive.

Syl. 5 (IX, 985). Conclusiveness of land decisions—Mixed questions.

Approved in Hartwell v. Havighorst, 196 U. S. 635, 49 L. 629, 25 Sup. Ct. 793, Estes v. Timmons, 12 Okl. 544, 73 Pac. 305, and Paine v. Foster, 9 Okl. 226, 53 Pac. 113, all following rule; Bates etc. Co. v. Payne, 194 U. S. 109, 48 L. 895, 24 Sup. Ct. 595, refusing to enjoin postmaster general from refusing to mail as second-class matter

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monthly musical publication, each issue of which is complete in itself and treats of works of single musician; Cook v. McCord, 9 Okl. 211, 60 Pac. 500, applying rule to decision of land officers on question as to whether or not lot abandoned by claimant; dissenting opinion in Paine v. Foster, 9 Okl. 262, 60 Pac. 25, majority refusing to review Land Department's decision where all pleadings and evidence before department and record shows there was some evidence to warrant finding.

Syl. 7 (IX, 986). Specification of fraud—Relief against patent.

Approved in Cella v. Brown, 144 Fed. 754, mere allegation in bill that plan of reorganization between two street railways was fraudulently designed presents no issuable matter; Le Marchel v. Teegarden, 133 Fed. 827, applying rule where patent attacked for mistake of fact; Cummings v. McDermid, 4 Okl. 278, 44 Pac. 277, applying principle to petition to set aside award of townsite trustees; Red River Furnace Co. v. Tennessee etc. R. R. Co., 113 Tenn. 713, 87 S. W. 1019, denying sufficiency of allegations of bill attacking election for city railroad aid subscription for fraud in bribing voters and permitting felons to vote.

Distinguished in Downman v. Saunders, 3 Okl. 231, 41 Pac. 106, petition by one seeking to recover townsite lot by virtue of actual occupancy as against one holding probate judge's decree need not allege fraud in making award.

101 U. S. 479-494, 25 L. 939, WOODBURY PATENT PLANING MACHINE CO. v. KEITH.

Syl. 2 (IX, 986). Patents—Abandonment.

Approved in Victor Talking Mach. Co. v. American Graph. Co., 140 Fed. 866, holding Berliner patent No. 534,543, for improvements in talking-machines, not abandoned.

(IX, 986.) Miscellaneous. Cited in Weston Electrical Instr. Co. v. Empire Electrical etc. Co., 136 Fed. 599, 69 C. C. A. 329, want of authority in patent commissioner to issue patent is pleadable as defense to infringement.

101 U. S. 494-503, 25 L. 1065, BAKER v. HUMPHREY.

Syl. 2 (IX, 987). Quitclaim grantee—Bona fide purchaser.

Approved in Lindblom v. Rocks, 146 Fed. 663, following rule.

101 U. S. 503-514, 25 L. 829, HALL v. RUSSELL.

Syl. 5 (IX, 989). Devise of settler's interest.

Approved in McCune v. Essig, 199 U. S. 390, 50 L. 241, 26 Sup. Ct. 78, doctrine of relation not invocable to confer right in land under operation of state laws on daughter of deceased homesteader against widow to whom patent issued; Cunningham v. Krutz, 41

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Wash. 197, 83 Pac. 112, where husband entered land as homestead and made final proof and obtained patent, wife could not devise undivided half of land in fee.

Distinguished in O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 108, under Rev. St., § 2322, on death of mining locator, his unpatented claims passed under statute to administrator and not to heirs.

101 U. S. 514-521, 25 L. 929, VANCE v. BURBANK.

Syl. 1 (IX, 989). Conclusiveness of land decisions.

Approved in Paine v. Foster, 9 Okl. 227, 53 Pac. 113, and Adams v. Couch, 1 Okl. 35, 26 Pac. 1015, both following rule; Estes v. Timmons, 199 U. S. 396, 50 L. 244, 26 Sup. Ct. 85, perjury on hearing before Land Department of contest over entry under homestead laws is not ground for equitable relief against departmental decision; Cook v. McCord, 9 Okl. 210, 60 Pac. 500, applying rule to question as to whether or not town lot abandoned; Thornton v. Peery, 7 Okl. 447, 54 Pac. 651, allegation that evidence given in contest before Land Department does not prove abandonment is insufficient to warrant review in equity.

Syl. 2 (IX, 990). Impeachment of land decisions.

Approved in Wabash R. R. Co. v. Mirrielees, 182 Mo. 143, 81 S. W. 442, refusing to set aside judgment at law on ground that successful party therein committed perjury at trial; Cummings v. McDermid, 4 Okl. 279, 44 Pac. 278, holding insufficient allegations of fraud in petition to set aside award of townsite trustees.

101 U. S. 551-555, 25 L. 1026, NONGUE v. CLAPP.

Syl. 1 (IX, 994). Annulling state judgments for fraud.

Approved in Strand v. Griffith, 144 Fed. 831, where, in state foreclosure, decree for mortgagee rendered on issue as to false representations of persons co-operating with mortgagee in selling goods as to quality and value, mortgagors could not sue in federal court to set aside deficiency judgment recovered in state court on ground of undiscovery of fact that mortgagee party to fraud.

101 U. S. 555-557, 25 L. 961, DURANT v. ESSEX CO.

Syl. 2 (IX, 995). Mandate of appellate court.

Approved in Taylor v. Colorado Iron Works, 33 Colo. 185, 80 Pac. 130, where district court has entered judgment as directed by court of appeals, such judgment is not reviewable by supreme court; State v. Sunapee Dam Co., 72 N. H. 115, 55 Atl. 900, applying principle where court divided as to ordering master to assess damages caused by maintenance of dam so as to deprive plaintiff of use of water; McClung v. Harris, 11 Okl. 65, 65 Pac. 942, dismissing appeal from

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decree entered by district court in accordance with mandate of appellate court.

101 U. S. 557-567, 25 L. 892, SHAW v. RAILROAD CO.

Syl. 3 (IX, 996). Title—Sale of stolen bill of lading.

See 105 Am. St. Rep. 358, note.

Syl. 4 (IX, 996). Transfer of bill of lading—Title to goods.

Approved in General Electric Co. v. Southern Ry., 72 S. C. 254, 110 Am. St. Rep. 603, 51 S. E. 696, where freight shipped under bill of lading with draft attached drawn by shipper and bill of lading was "to order of" shipper, "notify" third party, carrier could not deliver goods to such party without surrender of bill; Roy v. Northern Pac. Ry. Co., 42 Wash. 576, 85 Pac. 54, act of carrier's agent in delivering bill of lading for goods which he knew were not delivered to carrier does not bind carrier as to innocent transferee.

Syl. 5 (IX, 997). Statutes derogatory of common law.

Approved in Whitfield v. Aetna Life Ins. Co., 144 Fed. 360, construing Rev. St. Mo., 1899, § 7896, relating to defense of suicide in actions on life policies; White etc. Pub. Co. v. Apollo Co., 139 Fed. 432, copyright of printed musical composition is not infringed by perforated record for use with machine to play composition on musical instrument; United Shoe M. Co. v. Duplessis etc. Shoe Co., 133 Fed. 933, under Comp. St. 1901, p. 589, suit against alien for infringement of patent may be brought in any district where defendant found. See 105 Am. St. Rep. 338, note.

Syl. 6 (IX, 998). Purchaser of stolen bill of lading.

See 105 Am. St. Rep. 357, note.

101 U. S. 567, 568, 25 L. 815, MERCANTILE NATIONAL BANK v. CARPENTER.

Syl. 1 (IX, 998). Demurrer to bill—Limitations.

Approved in Thurmond v. Chesapeake etc. Ry. Co., 140 Fed. 699, following rule.

101 U. S. 570-572, 25 L. 868, BUTTERFIELD v. SMITH.

Syl. 1 (IX, 999). Conclusiveness of final account of administrator.

Approved in Whitney v. Wenman, 140 Fed. 960, order passing bankruptcy receiver's account, in which he has credited himself with property surrendered to third persons who claim same, does not bar suit by trustee to recover same.

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101 U. S. 577-590, 25 L. 963, WALDEN v. SKINNER.

Syl. 3 (IX, 1000). Reformation of instruments—Mistake.

Approved in Carrell v. McMurray, 136 Fed. 670, where parties agreed by parol to exchange farm for store, and farm owner was to retain possession and receive rents for current year, but scrivener failed to embody reservation, deed reformed to embody actual agreement; Johnson v. Sherwood, 34 Ind. App. 507, 73 N. E. 187, reforming deed and mortgage to show easement of way over land described; Richmond v. Ogden St. Ry. Co., 44 Or. 54, 74 Pac. 335, reforming notes where it was intended that notes given by trustees should not bind them personally, but by mistake in phraseology so drawn as to make them personally liable.

Syl. 7 (IX, 1001). Federal jurisdiction—Citizenship of real parties.

Approved in Burrell v. United States, 147 Fed. 46, in action on public contractor's bond given under Comp. St. 1901, p. 2523, presence of United States as formal party is insufficient to confer federal jurisdiction; United States v. Churchyard, 132 Fed. 83, upholding federal jurisdiction over action on contractor's bond given under Comp. St. 1901, p. 2523, irrespective of citizenship.

101 U. S. 591-596, 25 L. 1028, HOLLINGSWORTH v. FLINT.

Syl. 2 (IX, 1001). Married woman's deed—Acknowledgment.

Approved in American Bonding etc. Co. v. Gibson County, 145 Fed. 874, where judgment against building contractor and surety reversed for failure to allege or prove certification of claim by architect, action not sustainable on amendment of declaration that certificate procured after reversal.

Distinguished in Murray Co. v. Continental Gin Co., 149 Fed. 991, acknowledgment of assignment of patent relates back to date of assignment.

101 U. S. 597-601, 25 L. 1019, BECHTEL v. UNITED STATES.

Syl. 1 (IX, 1002). Remedial statutes liberally construed.

Approved in United States v. Foreman, 5 Okl. 257, 48 Pac. 98, one suing in territorial district court exercising federal jurisdiction for recovery of money paid for land on which entry erroneously allowed and afterward canceled, need not show surrender to Secretary of Interior of duplicate receipt and execution of relinquishment of claim to land as provided by Act Cong., June 16, 1880.

101 U. S. 601-609, 25 L. 1070, CRAMPTON v. ZABRISKIE.

Syl. 2 (IX, 1002). Taxpayers may enjoin county debt.

Approved in Murray v. City of Allegheny, 136 Fed. 61, 69 C. C. A. 65, upholding suit by lot owner to enjoin conveyance by city for private purposes of land dedicated as highway by original plat by

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which lots sold so as to give lot owners access to waterfront; Bates v. Mayor etc. of Nome, 1 Alaska, 212, upholding suit by taxpayer to enjoin municipal officers from paying expenses of election called in violation of law; Sherburne v. Portsmouth, 72 N. H. 540, 58 Atl. 39, upholding bill by taxpayer to enjoin city council from granting public common to individuals for baseball park; Kellogg v. School District No. 10, 13 Okl. 297, 74 Pac. 114, upholding injunction at suit of taxpayer to restrain school district from contracting for schoolhouse at unauthorized place and contracting liabilities therefor for which district would be liable; Johnson v. Black, 103 Va. 484, 106 Am. St. Rep. 890, 49 S. E. 635, upholding suit by taxpayers against supervisors to compel them to restore to county moneys paid them in excess of their salaries; dissenting opinion in Henry v. State, 87 Miss. 89, 39 So. 882, majority holding action of penitentiary board of control with relation to working of convicts is not reviewable by courts in absence of official misconduct.

101 U. S. 612-621, 25 L. 896, GATES v. GOODLOE.

Syl. 1 (IX, 1005). Bankruptcy—Error—Substitution of assignee.

Distinguished in Fred Macey Co. v. Macey, 135 Fed. 729, 68 C. C. A. 363, where amendment to show jurisdiction of removed case could not have been made in circuit court, it cannot be made on appeal, though parties consent.

101 U. S. 622-633, 25 L. 1030, JONES v. NEW YORK GUARANTY & INDEMNITY CO.

Syl. 5 (IX, 1006). Corporation's ultra vires mortgage—State.

Distinguished in Dunbar v. American Tel. Co., 224 Ill. 31, 79 N. E. 430, minority stockholders may restrain another corporation from purchasing majority stock in their company where object of purchase was to stifle competition, acquire control of company and destroy it.

Syl. 7 (IX, 1006). Forfeitures not favored in equity.

Approved in Brewster v. Lanyon Zinc Co., 140 Fed. 818, canceling oil and gas lease for breach of covenant as cloud on title; Duff v. Gilliland, 135 Fed. 585, refusing to cancel assignment of patent.

Syl. 8 (IX, 1007). Parol to explain agent's contract.

Approved in Stitt v. Rat etc. Lumber Co., 96 Minn. 33, 104 N. W. 564, deed absolute may be shown by parol to be mortgage to secure future advances and performance of contract though title not in mortgagor at time and put in name of third party for convenience; Harlan Co. v. Whitney, 65 Neb. 108, 101 Am. St. Rep. 610, 90 N. W. 994, where deed by way of mortgage recites that grantee is trustee for sureties on bond of grantor, parol evidence is admissible to identify bond and sureties.

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101 U. S. 633-637, 25 L. 1072, MASON LUMBER CO. v. BUCHTEL.

Syl. 3 (IX, 1007). Review of referee's findings.

Distinguished in United States v. Choctaw etc. R. R. Co., 3 Okl. 462, 464, 41 Pac. 749, specific findings of fact entered on journal at request of one of parties, though not made part of record by bill of exceptions, are part of record.

101 U. S. 638, 639, 25 L. 1073, MASON LUMBER CO. v. BUCHTEL.

Syl. 3 (IX, 1008). Conclusiveness of judgment.

Approved in Georgia R. etc. Co. v. Wright, 132 Fed. 916, 917, where state court decided in suit between state and railroad that charter created contract precluding tax in excess of certain percentage of net earnings, state is concluded in subsequent suit involving taxes for other year under different statute; Territory v. Hopkins, 9 Okl. 150, 59 Pac. 981, decree determining validity of bonds involved in statutory proceeding is conclusive on all issues.

101 U. S. 641-646, 25 L. 1075, KENNEDY v. CRESWELL.

Syl. 3 (IX, 1009). Equity—Plea found false.

Approved in American Graph. Co. v. Leeds etc. Co., 140 Fed. 981, burden of proof rests on plaintiff to support plea.

Syl. 7 (IX, 1009). Recovery of assets by decedent's creditors.

Approved in Southern Pac. R. R. Co. v. United States, 200 U. S. 351, 50 L. 511, 26 Sup. Ct. 296, refusing to dismiss for adequacy of law remedy where government files bill to cancel patents erroneously granted to railroad and prays discovery of sales to bona fide purchasers.

Distinguished in United States v. Bitter Root Development Co., 200 U. S. 476, 50 L. 562, 26 Sup. Ct. 318, denying equitable jurisdiction over suit by government for wrongful cutting and carrying away timber from government land, though one of defendants is executrix of insolvent estate of principal wrongdoer.

101 U. S. 647-664, 25 L. 945, IMHAEUSER v. BUERK.

Syl. 3 (IX, 1010). Patent infringement—Prior invention.

Approved in Cutler etc. Mfg. Co. v. Union Elec. Mfg. Co., 147 Fed. 272, Blades patent No. 418,678, for electric switch for motors, not anticipated and infringed by device of Keeney & Rhine patent No. 777,637.

Distinguished in Central Foundry Co. v. Coughlin, 141 Fed. 95, holding Coughlin patent No. 553,055, for foundry ladle, not infringed.

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101 U. S. 677-688, 25 L. 968, DOUGLASS v. COUNTY OF PIKE.

Syl. 3 (IX, 1012). Change of judicial statutory construction.

Approved in Lepine v. Marrero, 116 La. 942, 41 So. 217, registration of act of sale signed by vendor alone will affect registry of sale.

Distinguished in Sedalia v. Donohue, 190 Mo. 418, 89 S. W. 389, where Kansas City court of appeals decided that under Rev. St. 1889, § 1498, conferring power on council to levy tax for street improvements, tax bill issued by clerk in pursuance of resolution of council was valid, tax bills subsequently issued by clerk are not contracts impaired by subsequent decision holding them invalid.

101 U. S. 688-692, 25 L. 1004, CASE v. BEAUREGARD.

Syl. 2 (IX, 1014). Exhaustion of legal remedy, how shown.

Approved in Wyman v. Wallace, 201 U. S. 242, 50 L. 741, 26 Sup. Ct. 495, judgment at law on note given by national bank note not necessary to suit by holder to subject to its satisfaction property conveyed to trustee as security therefor; George v. Wallace, 135 Fed. 292, 68 C. C. A. 40, where assets of national bank in liquidation put in hands of defendant, who was trustee for another bank, which assumed payment of creditors, holder of note given by liquidating bank as part of assumption contract may enforce lien on bank's assets and obtain administration of its affairs without reducing claim to judgment.

Distinguished in Flournoy v. Bullock, 11 N. M. 104, 106, 66 Pac. 550, 55 L. R. A. 745, where partnership thrown into hands of receiver to sell property and divide proceeds among creditors, simple contract creditor cannot intervene and secure judgment against firm and one of members.

Syl. 3 (IX, 1016). Res adjudicata—Correctness of decree.

Approved in City of Defiance v. McGonigale, 150 Fed. 697, decision of state court in suit to enjoin further performance of contract made by city with water company, followed in subsequent federal action by water company to recover rentals under contract; Philbrook v. Newman, 148 Cal. 175, 82 Pac. 773, motion in supreme court to vacate order vacating former order rendered nine years previously affirming order denying new trial not maintainable on ground that order was wrong as to facts and law; Georgia R. R. etc. Co. v. Wright, 124 Ga. 603, 53 S. E. 254, holding nonappealing defendant estopped in subsequent suit from setting up matter which might have been pleaded on appeal; Lockhart v. Leeds, 12 N. M. 164, 76 Pac. 314, judgment for defendant in action to declare location void for fraud and violation of agreement to locate claim for plaintiff bars suit to have property declared held in trust for plaintiff.

Distinguished in Memphis City Bank v. Smith, 110 Tenn. 360, 75 S. W. 1071, where in prior action by defendant against plaintiff, as

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indorser of note, latter pleaded notes secured by property which defendant sold, and that prior thereto plaintiff tendered him amount of debt and awarded release of security which was refused, and plaintiff cross-complained for usury and judgment rendered for amount of debt less usury, decree not res adjudicata in action for conversion of property.

101 U. S. 693-700, 25 L. 1005, ANTHONY v. COUNTY OF JASPER.

Syl. 2 (IX, 1017). Form of execution of municipal bonds.

Approved in Frank v. Butler Co., 139 Fed. 122, where Nebraska laws authorized county railroad aid bonds on note of people and required registration and certification of bonds by state officer, bonds issued without certification and registration are void.

Syl. 4 (IX, 1017). Bond purchaser—Notice of law.

Approved in Wright v. East Riverside Irr. Dist., 138 Fed. 319, where bonds prepared under California irrigation act of 1887, and coupons contained lithographed name of then secretary, and bonds delivered eighteen months afterward signed by succeeding secretary, but lithographed signature on coupons not changed, bonds void; Sauer v. Gillett, 20 Colo. App. 371, 78 Pac. 1070, bonds payable on demand issued under ordinance which did not provide for tax levy are invalid in hands of bona fide purchaser, irrespective of recital that they were issued in compliance with law; City of Guthrie v. New Vienna Bank, 4 Okl. 217, 38 Pac. 11, legislature cannot require city to pay debts in excess of maximum limit fixed by laws of United States.

Syl. 8 (IX, 1018). Municipal agent's authority limited by statute.

Approved in dissenting opinion in Wright v. East Riverside Irr. Dist., 138 Fed. 325, majority holding where bonds prepared under California irrigation act of 1887, and coupons signed by then secretary, and bonds delivered eighteen months afterward, signed by succeeding secretary without changing signature on coupons, bonds void.

Syl. 9 (IX, 1019). Purchasers of municipal bonds—Signatures.

Approved in Wright v. East Riverside Irr. Dist., 138 Fed. 322, where bonds prepared under California irrigation act of 1887, and coupons contained name of then secretary, and bonds delivered eighteen months afterward signed by succeeding secretary, but signature on coupons not changed, bonds void.

Distinguished in Gage v. McCord, 5 Ariz. 234, 51 Pac. 979, 980, territorial bonds once dated and executed under Act Cong. June 25, 1890, § 4, may be thereafter negotiated by successors of loan commissioners.

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101 U. S. 711-721, 25 L. 872, EX PARTE DENVER & RIO GRANDE RY. CO.

Syl. 2 (IX, 1020). Mandamus to inferior court.

See 98 Am. St. Rep. 890, note.

101 U. S. 721-726, 25 L. 833, PHILLIPS v. GILBERT.

Syl. 2 (IX, 1020). Mechanic's lien against several buildings.

Approved in Seattle Lumber Co. v. Sweeney, 33 Wash. 696, 74 Pac. 1002, notice claiming lien on five different buildings situated on different lots and not designating material furnished for each does not invalidate lien.

Distinguished in Beach v. Stamper, 44 Or. 7, 102 Am. St. Rep. 597, 74 Pac. 209, subcontractor furnishing materials for several buildings under entire contract with contractor bound by separate contracts for construction of separate buildings is not entitled to lien on all buildings for lump sum due.

101 U. S. 731-744, 25 L. 816, STEWART v. PLATT.

Syl. 1 (IX, 1021). Chattel mortgage—Place of recordation.

Approved in In re Brannock, 131 Fed. 821, 823, recital in chattel mortgage of residence of mortgagor is not evidence of his residence to determine proper place of recordation; First Nat. Bank v. Beley, 32 Mont. 296, 80 Pac. 258, affidavit of renewal stating requisite facts, including averment of good faith, does not validate chattel mortgage originally void as to attaching creditors because of want of affidavit of good faith; Pierson v. Hickey, 16 S. D. 49, 91 N. W. 340, chattel mortgage not filed as required by Comp. Laws, § 4379, is void as against execution levied on mortgage property, though debt on which judgment recovered existed prior to mortgage.

Distinguished in In re Brannock, 131 Fed. 823, under Code Iowa, § 2906, mortgage given by railroad contractor on property in his possession in county where he is at work, and in which he resides while performing contract, is properly recorded there, though residence there only temporary.

Syl. 3 (IX, 1022). Bankruptcy—Title of assignee—Equities.

Approved in York Mfg. Co. v. Cassell, 201 U. S. 352, 50 L. 785, 26 Sup. Ct. 481, adjudication in bankruptcy does not operate as lien in favor of trustee as against conditional vendor of property, because of nonfiling of contract as required by Ohio Rev. St., § 4155; Thompson v. Fairbanks, 196 U. S. 526, 49 L. 586, 25 Sup. Ct. 306, enforcement of inchoate lien of valid chattel mortgage covering after-acquired property by taking possession with knowledge of contemplated bankruptcy is not voidable preference; In re Cramond, 145 Fed. 976, persons performing labor for city contractor, who thereafter became bankrupt, having filed no notice of lien under N. Y.

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Laws 1897, § 12, p. 520, § 17, p. 522, have no lien on amount due from city to contractor; In re Beede, 138 Fed. 453, Bankr. Act 1898, § 67, applies to judgments obtained by creditors of bankrupt subsequent to adjudication where action had been commenced prior to institution of bankruptcy proceedings; In re Prince, 131 Fed. 552, where sale of bankrupt's realty made subject only to first mortgage, proceeds of sale should be applied to other liens to exclusion of costs of administering bankrupt's estate; Butson v. Home Savings & Trust Co., 129 Iowa, 378, 105 N. W. 648, where building association paid loan of $300, made to defendant by another society by paying difference between original loan and withdrawal value of defendant's stock, and defendant treated as borrower of $300, association could not charge defendant with greater loan than cash actually paid other society; Brunnemer v. Cook, 180 N. Y. 191, 73 N. E. 20, chattel mortgage improperly filed is valid as against mortgagor's bankruptcy's trustee; Christ v. Zehner, 212 Pa. 192, 61 Atl. 823, where bill of sale given to secure loan, but possession of goods not taken, and later, within four months of bankruptcy, bill indorsed to effect that loan still due and that possession given vendor, there was no unlawful preference; dissenting opinion in Blackman v. Baxter, 125 Iowa, 130, 100 N. W. 79, 70 L. R. A. 250, majority holding administrator may insist that chattel mortgage executed by decedent while insolvent is void as to creditor because not recorded till after decedent's death. See 104 Am. St. Rep. 913, note.

Distinguished in In re Noel, 137 Fed. 703, where several mortgages, first to secure loan and rest to secure renewals, were not recorded within time required by statute, so as to uphold mortgagor's credit, last of series, though recorded, is void as to mortgagor's bankruptcy trustee; Skilton v. Codington, 185 N. Y. 88, 77 N. E. 792, chattel mortgage not filed till five years after execution is void as against bankruptcy trustee of mortgagor.

Syl. 6 (IX, 1023). Bankruptcy—Exchange of securities.

Approved in In re Cutting, 145 Fed. 390, renewal mortgage not preference in act of bankruptcy, though it includes additional property where mortgagor receives further present consideration; In re Noel, 137 Fed. 700, where valid mortgage given as security for present loan, fact that new mortgage on same property given within four months of mortgagor's bankruptcy does not make mortgage voidable as preference.

101 U. S. 745-754, 25 L. 1040, GODDARD v. ORDWAY.

Syl. 3 (IX, 1024). Court's power during term.

Approved in Mackenzie v. Pease, 146 Fed. 744, circuit court of appeals may, during term, vacate order allowing appeal inadvertently entered.

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101 U. S. 755-772, 25 L. 915, WOLSEY v. CHAPMAN.

Syl. 1 (IX, 1024). Public lands reserved from sale.

Approved in United States v. Tully, 140 Fed. 902, determining whether lands in military reservation were legally reserved so as to give federal court jurisdiction over murder committed thereon; Northern Lumber Co. v. O'Brien, 139 Fed. 617, Northern Pacific grant of 1864 did not embrace lands reserved by land office for satisfaction of prior grant, though lands subsequently became "public lands"; Behrends v. Goldsteen, 1 Alaska, 524, portion of public lands in Alaska set apart by order of Secretary of Navy and used for purposes of Navy Department constitute valid reservation by execution; State v. Tully, 31 Mont. 382, 78 Pac. 766, denying state jurisdiction over homicide committed on portion of lands of Ft. Missoula Reservation.

101 U. S. 773-781, 25 L. 925, LITCHFIELD v. COUNTY OF WEBSTER.

Syl. 5 (IX, 1026). Taxation—Interest.

Cited in State v. Chicago etc. Ry. Co., 128 Wis. 518, 108 N. W. 614, arguendo.

101 U. S. 782-789, 25 L. 1044, YOUNG v. BRADLEY.

Syl. 1 (IX, 1027). Nature and duration of trust.

Approved in Brillhart v. Mish, 99 Md. 458, 58 Atl. 31, where owner of curtesy in land of deceased wife deeds his life estate in trust for his life to one to manage and pay for his support out of profits, trustee could not contest partition among remaindermen free from life estate where grantor consented thereto; Graham v. Whitridge, 99 Md. 293, 58 Atl. 38, 66 L. R. A. 408, where life tenants in legal life estate under will are entitled to vested remainders in property, life tenant take absolute estate; Angle v. Marshall, 55 W. Va. 680, 47 S. E. 886, where owner of life estate deeds it to A in trust to manage same for grantor's benefit, subsequent conveyance of life estate by grantor terminated A's trust. See 100 Am. St. Rep. 103, note.

101 U. S. 791-797, 25 L. 921, WRIGHT v. NAGLE.

Syl. 4 (IX, 1029). Franchise monopolies not presumed.

Approved in Water etc. Co. v. City of Hutchinson, 144 Fed. 263, under Kansas laws, city of second class cannot grant exclusive right for term to company to use streets to supply water and gas to city and inhabitants; In re Spease Ferry, 138 N. C. 221, 50 S. E. 625, upholding Laws 1895, p. 295, authorizing certain persons to establish ferry at certain point for thirty years, and making it unlawful for any one to establish other ferry within mile and a half thereof.

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101 U. S. 797-810, 25 L. 1021, TRENIER v. STEWART.

Syl. 5 (IX, 1030). Spanish grant—Perfect title at cession.

Approved in Catron v. Laughlin, 11 N. M. 633, 72 Pac. 32, holding congressional confirmation of Mexican grant is adjudication of perfect title to whole of land.

101 U. S. 810-813, 25 L. 875, DUNCAN v. GEGAN.

Syl. 1 (IX, 1030). Removal—Proceedings in federal court.

Approved in Hatcher v. Hendrie etc. Supply Co., 133 Fed. 269, 68 C. C. A. 19, lien obtained by attachment in state court not lost by removal; Bryce v. Southern Ry. Co., 129 Fed. 967, where at time of filing removal petition motion to make complaint more definite was pending, motion was transferred to federal court with record to be there determined; Kipp v. Burton, 29 Mont. 102, 101 Am. St. Rep. 544, 74 Pac. 87, 63 L. R. A. 325, execution issued without seal of court is voidable only.

101 U. S. 814-821, 25 L. 1079, STONE v. MISSISSIPPI.

Syl. 2 (IX, 1031). Police power not contractable.

Approved in Manigault v. Springs, 199 U. S. 481, 50 L. 279, 26 Sup. Ct. 127, obligations of agreement to remove existing dam from navigable stream not impaired by subsequent statute to subserve drainage of lowlands, authorizing construction of dam by persons making agreement; New Orleans Gaslight Co. v. Drainage Commission, 197 U. S. 460, 49 L. 835, 25 Sup. Ct. 471, upholding imposition on gas company of cost of changes in location of pipes in streets, necessitated by construction of drainage system though it had exclusive franchise; Grainger v. Douglas Park Jockey Club, 148 Fed. 541, upholding Kentucky act of 1906, creating state racing commission and regulating racing of running horses; Louisville v. Wehmhoff, 116 Ky. 848, 79 S. W. 202, upholding city ordinance forbidding transmission to poolroom operator of messages intended to be used in pool-selling business, though messages come from other state; State v. Hyman, 98 Md. 614, 57 Atl. 8, 64 L. R. A. 637, upholding act of 1902, regulating sweating system; Van Cleve v. Passaic Valley Sewerage Commrs., 71 N. J. L. 224, 58 Atl. 587, acts under which city of Paterson authorized to empty sewage into Passaic river are revocable at will of legislature; Norfolk etc. R. R. Co. v. Commonwealth, 103 Va. 293, 49 S. E. 40, state corporation commission may fix charges for placing cars on track scales in connection with spur tracks; Petersburg v. Petersburg Aqueduct Co., 102 Va. 659, 47 S. E. 849, city may prohibit water company, chartered when city sparsely settled and which had never attempted to extend system from digging up streets in extending limits.

Syl. 3 (IX, 1032). Scope of police power.

Approved in State v. Robb, 100 Me. 185, 60 Atl. 876, upholding ordinance prohibiting removal of house offal by any but person authorized so to do; Ex parte Boyce, 27 Nev. 340, 75 Pac. 6, 665 L. R. A. 47, up-

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holding act of 1903, providing eight-hour work day in mines, smelters and ore-mills; Wallace v. Mayor etc. of Reno, 27 Nev. 81, 73 Pac. 531, 63 L. R. A. 337, upholding provision of Reno charter authorizing city board to revoke and discontinue business licenses where there is reason to believe business is nuisance or menace to health or morals; Sandys v. Williams, 46 Or. 337, 80 Pac. 646, upholding ordinance prohibiting sale of liquor in private rooms or alcoves connected with saloons. See 104 Am. St. Rep. 638, note.

101 U. S. 832-835, 25 L. 973, SOUTH & NORTH ALABAMA R. R. CO. v. ALABAMA.

Syl. 1 (IX, 1035). Obligation of contracts—Repeal of statute.

Approved in In re Hoople, 179 N. Y. 312, 72 N. E. 230, right to refund amount of transfer tax illegally assessed is barred if, at time demand for refund made, action for same would be barred as between private parties.

101 U. S. 837-890, 25 L. 1081, HOWARD v. MILWAUKEE ETC. RY. CO.

Syl. 4 (IX, 1036). Writ of assistance.

Approved in Fox v. Stubenrauch, 2 Cal. App. 94, 83 Pac. 84, where complaint averred the defendant whose name changed in judgment was in possession and at hearing of application for writ of assistance it appeared that persons named in judgment and in deed made pendente lite, grantee of defendant cannot defeat writ.

CII UNITED STATES.

102 U. S. 1-14, 26 L. 59, MYER v. WESTERN CAR CO.

Syl. 1 (IX, 1037). Mortgage of after-acquired property.

Approved in Tilford v. Atlantic Match Co., 134 Fed. 927, holder of corporation's bonds secured by trust mortgage executed prior to corporation's purchase of boiler under conditional contract of sale reserving title till price paid was not subsequent mortgage within statute making conditional contracts of sale not recorded void as to subsequent mortgagors.

Syl. 3 (IX, 1037). Construction of Revised Statutes.

Approved in Schmidt v. United States, 133 Fed. 261, 66 C. C. A. 389, one swearing falsely in naturalization proceeding in state court may be indicted in federal court under Comp. St. Supp. 1903, p. 191.

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102 U. S. 14-59, 26 L. 61, BROOKLYN CITY ETC. R. R. CO. v. NATIONAL BANK OF THE REPUBLIC.

Syl. 1 (IX, 1039). Judgment against indorser as barring maker.

Approved in Australian Knitting Co. v. Gormly, 138 Fed. 97, manufacturer of infringing article who assists purchaser from him in defending suit for infringement by use of article, but who is not party of record, is not estopped by decree from setting up new defenses against validity of patent in suit against him.

Syl. 2 (IX, 1039). Judgment as estoppel.

Approved in Morrison v. Atkinson, 16 Okl. 576, 85 Pac. 473, where party asserts legal rights in district court and assumes certain position, he is estopped from denying legality of that position on appeal.

Syl. 3 (IX, 1039). Notes—Transfer before maturity.

Approved in Birket v. Elward, 68 Kan. 300, 302, 74 Pac. 1101, 1102, 64 L. R. A. 568, following rule; Iowa Nat. Bank v. Sherman, 17 S. D. 406, 106 Am. St. Rep. 778, 97 N. W. 15, application of proceeds of negotiable note to credit of transferrer on existing debt is sufficient consideration to constitute transferee bona fida holder.

Syl. 11 (IX, 1043). Holder of note for antecedent debt.

Approved in Gamble v. Rural Ind. School Dist., 132 Fed. 522, one obtaining school district bond in payment for services rendered and to be rendered, and which were rendered to full value of bond, is innocent holder for value where bond not due and showed nothing on face to show invalidity; Tollman v. Quincy, 129 Fed. 975, where defendant's note transferred to plaintiff before maturity in settlement of pending suit, plaintiff's counsel being told that it had been given by maker to payee in settlement of account between them, it is no defense that note was accommodation paper.

102 U. S. 68-79, 26 L. 79, KIRK v. HAMILTON.

Syl. 1 (IX, 1045). Ejectment—Equitable estoppel as defense.

Approved in Campbell v. Golden Cycle Min. Co., 141 Fed. 616, estoppel in pais forms no basis for restraining prosecution of action at law; South Penn. Oil Co. v. Calf Creek etc. Co., 140 Fed. 514, where two law actions pending against same defendant for damages for taking oil from land, one by land owner and other by lessee, and rights of plaintiffs as between themselves are uncertain under lease, and defense to both actions is estoppel in pais, equity has jurisdiction of suit by defendant against both plaintiffs to determine entire matter; Anglo-American Land etc. Co. v. Lombard, 132 Fed. 733, 68 C. C. A. 89, estoppel in pais is available as defense to action at law to enforce stockholder's liability; Hoge v. Fidelity etc. Co., 103 Va. 11, 12, 48 S. E. 495, where complainant had defense of equitable estoppel to debt sued on but neglected to make defense to action at law, he could not thereafter enjoin collection of judgment on ground of such estoppel.

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Syl. 2 (IX, 1046). Estoppel by silence.

Approved in Cheatham v. Edgefield Mfg. Co., 131 Fed. 121, facts constituting equitable estoppel are pleadable as defense to ejectment in federal court; American Freehold etc. Co. v. Walker, 119 Ga. 343, 46 S. E. 427, where one as agent for another signs deed, he is estopped from asserting against grantee any adverse right based on interest outstanding in agent at time of deed.

102 U. S. 79-81, 26 L. 48, GAY v. ALTER.

Syl. 1 (IX, 1047). Rescission of installment contract.

Approved in Pierce v. Staub, 78 Conn. 467, 62 Atl. 763, 3 L. R. A. (N. S.) 785, where contract of sale providing for installment payment contained no forfeiture clause and seller resold property after failure of payments, buyer could recover money paid; Buskirk Bros. v. Peck, 57 W. Va. 372, 50 S. E. 437, refusing to assert forfeiture under contract for sale of timber to be cut and removed in certain time and measured and paid for each month, before removal, by purchaser or else latter shall forfeit title to timber, where seller allows timber to be cut without measurement or payment.

102 U. S. 81-95, 26 L. 83, MENASHA v. HAZARD.

Syl. 3 (IX, 1047). Railroad aid—Consolidation of road.

Approved in Jones v. Missouri-Edison El. Co., 135 Fed. 157, stockholder in one of two consolidated corporations cannot sue in equity to avoid consolidation.

Distinguished in Jones v. Missouri-Edison Elec. Co., 144 Fed. 775, minority stockholder may for fraud sue to avoid act of consolidation and to restore to corporation property transferred to consolidated company.

102 U. S. 108-112, 26 L. 92, GIDDINGS v. NORTHWESTERN MUT. LIFE INS. CO.

Syl. 1 (IX, 1049). Insurance—Payment of premium.

Approved in Sterling v. Head Camp etc. Woodmen of World, 28 Utah, 521, 522, 80 Pac. 380, where benefit certificate never delivered to insured nor signed by local officers of lodge as provided for by by-laws, contract was inoperative.

102 U. S. 112-118, 26 L. 93 PEARCE v. MULFORD.

Syl. 2 (IX, 1049). Patent for improvement.

Approved in New York Belting etc. Co. v. Sierer, 149 Fed. 768, holding void Furness & Watts patent No. 527,961, for interlocking tiles.

102 U. S. 120, 26 L. 58, PITTSBURG ETC. RY. CO. v. HECK.

Syl. 1 (IX, 1050). Ruling on new trial not reviewable.

Approved in Newport etc. Ry. etc. Co. v. Yount, 136 Fed. 590, 69 C. C. A. 363, Southern Pac. Co. v. Maloney, 136 Fed. 173, 69 C. C. A.

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83, and United Engineering etc. Co. v. Broadnax, 136 Fed. 353, 69 C. C. A. 177, all following rule.

Syl. 2 (1051). Appeal—Exceptions taken at trial.

Approved in National Bank v. Schufelt, 145 Fed. 510, where no exception taken to ruling on admission of evidence, objection waived.

102 U. S. 121-122, 26 L. 95, HAYES v. FISCHER.

Syl. 2 (IX, 1052). Review of contempt—Violation of injunction.

Approved in Heinze v. Butte etc. Min. Co., 129 Fed. 279, 63 C. C. A. 388, where one convicted for violation of injunction issued in equity suit filed in aid of action at law, judgment of contempt not reviewable on error; Bullock El. etc. Co. v. Westinghouse El. etc. Co., 129 Fed. 106, 63 C. C. A. 607, judgment of conviction for contempt in violating injunction is reviewable on error and not by appeal.

Distinguished in In re Christensen Engineering Co., 194 U. S. 460, 48 L. 1074, 24 Sup. Ct. 729, error lies from circuit court of appeals to review order of circuit court adjudging defendant in infringement suit guilty of contempt in disobeying preliminary injunction; Bessette v. W. B. Conkey Co., 194 U. S. 332, 334, 48 L. 1003, 24 Sup. Ct. 665, order of circuit court finding one not party to suit guilty of contempt in violating injunction is reviewable by circuit court of appeals on error.

102 U. S. 123-128, 26 L. 103, TIERNAN v. RINKER.

Syl. 1 (IX, 1053). Taxing liquor dealers—Exceptions.

Approved in Cox v. Texas, 202 U. S. 451, 50 L. 1101, 26 Sup. Ct. 671, upholding Texas statute taxing liquor dealers and exempting producers or manufacturers of domestic wines while wines are in their hands; Hart v. State, 87 Miss. 179, 39 So. 525; upholding Code 1892, § 1604 making it misdemeanor to act as agent of either seller or buyer in effecting unlawful sale of liquor where sale prohibited; Douthit v. State, 36 Tex. Civ. 397, 82 S. W. 353, upholding statute regulating sale of liquor and providing that it shall not apply to wines produced from grapes grown in state while in hands of producers.

Syl. 2 (IX, 1053). State tax on sale of foreign liquor.

Approved in Ex parte Deeds, 75 Ark. 545, 87 S. W. 1031, holding void Kirby's Dig., § 6886, prohibiting peddling of certain articles without license, but providing that it shall not apply to resident of county.

102 U. S. 135-144, 26 L. 96, NEW ORLEANS ETC. R. R. CO. v. MISSISSIPPI.

Syl. 1 (IX, 1055). Removal—State jurisdiction after petition.

Approved in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 244, 49 L. 464, 25 Sup. Ct. 251 upholding removal of condemnation proceeding brought under Kentucky statute; Boatmen's

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Bank v. Fritzlen, 135 Fed. 653, 68 C. C. A. 288, where improper party joined or show cause of action injected into case, simply to defeat federal jurisdiction, court will not remand.

102 U. S. 145-148, 26 L. 53, LANGFORD v. MONTEITH.

Syl. 1 (IX, 1059). Indian treaties—Tax on Indian lands.

Approved in Gay v. Thomas, 5 Okl. 12, 46 Pac. 582, upholding taxation of cattle of white men grazed on Indian reservations under leases from Indians; Keokuk v. Ulam, 4 Okl. 13, 38 Pac. 1083, upholding taxation of personalty of Indians by county into which reservation is included, where Indians have taken allotments.

102 U. S. 148-161, 26 L. 106, GRAHAM v. LA CROSSE ETC. R. R. CO.

Syl. 1 (IX, 1060). Sale by insolvent corporation.

Approved in Heineman v. Marshall, 117 Mo. App. 553, 92 S. W. 1133, where officers of beneficial association transferred control of association and surrendered offices to others for money, subsequent creditor could not recover proceeds of transaction from delinquent officers; Home Fire Ins. Co. v. Barber, 67 Neb. 660, 108 Am. St. Rep. 730, 93 N. W. 1030, subsequent stockholders cannot sue to attack prior mismanagement of corporation.

Distinguished in dissenting opinion in Heineman v. Marshall, 117 Mo. App. 559, 92 S. W. 1135, majority holding where officers of beneficial society transferred control of society and surrendered offices to others for money, subsequent creditors could not recover money from delinquent officers.

Syl. 5 (IX, 1062). Insolvent corporation's assets trust fund.

Approved in In re Remington etc. Motor Co., 139 Fed. 776, where manufacturing corporation contracted with board of trade to sell it shares at less than par, and latter was to furnish free building site, stock not liable to assessments for benefit of creditors of corporation; Jacobs v. Mexican Sugar Co., 130 Fed. 592, suit by stockholder of insolvent corporation for its dissolution is within federal equity jurisdiction where such remedy is given stockholder by state statute; City Nat. Bank v. Goshen Woolen Mills Co., 35 Ind. App. 579, 69 N. E. 211, creditors of insolvent corporation may complain of acts of directors in making unlawful preferences.

102 U. S. 163-167, 26 L. 111, POTTER v. THIRD NATIONAL BANK.

Syl. 3 (IX, 1064). Party as witness.

Approved in Smith v. Au Gres Twp., 150 Fed. 263, witness may testify after death of bankrupt to admissions made by bankrupt concerning his estate while he was yet owner thereof; Russell v. Russell, 129 Fed. 441, widow may testify with respect to making antenuptial agreement in suit to recover her dower in husband's estate, to which executors only nominal parties.

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102 U. S. 167-176, 26 L. 126, IVANHOE MINING CO. v. KEYSTONE CONSOLIDATED MINING CO.

Syl. 1 (IX, 1065). School land grant to state.

Approved in State v. Trustees, 47 Fla. 319, 35 So. 992, construing act of 1845, granting school lands to Florida.

Syl. 2 (IX, 1065). School lands—Indemnity.

Approved in Gonzales v. French, 4 Ariz. 82, 33 Pac. 503, 504, where settlers in school section failed to assert pre-emption claim after survey, but sold possessions, purchaser acquired no rights.

102 U. S. 177-180, 26 L. 129, JIFKINS v. SWEETZER.

Syl. 1 (IX, 1066). Removal—Time to file petition.

Approved in Kentucky v. Powers, 139 Fed. 485, Rev. St., § 641, relating to removals, applies where by rulings in prior trials of same indictment defendant discriminated against in selection of jurors and under judicial rules court refused evidence to prove discrimination.

102 U. S. 183-186, 26 L. 43, EX PARTE PERRY.

Syl. 1 (IX, 1067). Mandamus to inferior court.

Approved in Barber Asphalt etc. Co. v. Morris, 132 Fed. 955, 67 L. R. A. 761, 66 C. C. A. 55, granting mandamus commanding circuit judge to vacate order staying action on claim against city pending appellate proceedings in state court.

102 U. S. 200-203, 26 L. 145, THE CLARA.

Syl. 1 (IX, 1068). Collision—Conclusiveness of findings.

Approved in Wiser v. Lawler, 7 Ariz. 183, 62 Pac. 700, applying principle on equity appeal.

Syl. 2 (IX, 1068). Collision—Anchored vessel without watch.

Approved in The City of Birmingham, 138 Fed. 559, holding dredge anchoring at night in center of narrow channel near sharp bend liable for collision.

Syl. 4 (IX, 1069). Collision—Damages—Fault.

Approved in The Jumna, 149 Fed. 173, holding evidence showed lack of negligence on part of vessels in collision, and that collision due to inevitable accident.

102 U. S. 203-207, 26 L. 132, LOUISIANA v. NEW ORLEANS.

Syl. 1 (IX, 1069). Meaning of obligation of contract.

Approved in Ex parte Folsom, 131 Fed. 503, holding void S. C. constitutional amendment of 1902 to Const. 1895, art. 7, § 11, abolishing certain townships which had issued bonds in payment of railroad stock as authorized by statute; Smith v. Jennings, 67 S. C. 337, 45 S. E. 826, joint resolution requiring state treasurer to write off books as obligations of state certain past due bonds is not law impairing contract obligations.

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Syl. 2 (IX, 1069). Impairment of contracts—Retarding enforcement.

Approved in Harrison v. Remington Paper Co., 140 Fed. 392, holding void, as against contracts made prior to passage, Kansas act of 1898, substituting suit in equity by receiver to be appointed after judgment against corporation, for individual action by creditor to enforce stockholder's liability; Myers v. Knickerbocker Trust Co., 139 Fed. 116, affirming Knickerbocker Trust Co. v. Myers, 133 Fed. 768, holding void Maryland act of 1904, substituting for individual action by creditor to enforce stockholder's liability single suit in equity for benefit of all creditors.

102 U. S. 214, 219, 26 L. 157, THE BENEFACTOR.

Syl. 2 (IX, 1071). Admiralty—Conclusiveness of findings.

Approved in Wiser v. Lawler, 7 Ariz. 183, 62 Pac. 700, applying rule on equity appeal.

102 U. S. 222-230, 26 L. 149, GOODYEAR DENTAL ETC. CO. v. DAVIS.

Syl. 2 (IX, 1072). Patents—Disclaimer.

Approved in Rembert etc. Compress Co. v. American Cotton Co., 129 Fed. 369, 64 C. C. A. 25, holding Rembert patent No. 441,022, for method of baling cotton, limited and not infringed by machine of Graves patent No. 473,144.

102 U. S. 235-247, 26 L. 160, HERYFORD v. DAVIS.

Syl. 2 (IX, 1073). Contracts—Intent of parties.

Approved in Kelley, Maus & Co. v. Sibley, 137 Fed. 591, 69 C. C. A. 674, where defendant proposed to sell plaintiff unlimited quantity of bolts at certain per cent off, at five per cent commission, which bolts he was to get under contract with factory, and plaintiff accepted offer, defendant was seller and not plaintiff's agent.

Syl. 3 (IX, 1074). Conditional sale of chattel mortgage.

Approved in Tompkins v. Monticello etc. Oil Co., 137 Fed. 629, contract for purchase of machinery providing that title remain in seller until payment and failure to execute notes as provided in contract or pay same at maturity, entitled seller to take possession, was mortgage and not conditional sale; Kennedy v. Lee, 147 Cal. 601, 82 Pac. 259, contract for sale of corporate stock on condition that buyer pay for same on his obtaining control of corporation and realizing certain sum within four years by sale of property or earnings of mine, is conditional sale; Scott v. Shultz, 67 Kan. 607, 73 Pac. 904, where lease of mining property for term stipulated that at expiration personalty not consumed should be returned in kind or value at lessor's option, transaction was sale of personalty; Kessler v. Manhein, 114 La. 624, 38 So. 475, arguendo.

Denied in Freed Furniture etc. Co. v. Sorenson, 28 Utah, 429, 431, 107 Am. St. Rep. 731, 79 Pac. 566, 567, contract note providing for

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installment payments reserving title in seller till fully paid, and authorizing seller on default to take possession and indorse value of property on note or resell same and indorse proceeds, is conditional sale.

102 U. S. 256-263, 26 L. 101, PEOPLE'S BANK v. CALHOUN.

Syl. 2 (IX, 1076). Removal of state suit after federal receiver.

Approved in In re Porterfield, 138 Fed. 197, where trust deed from bankrupt to wife recorded less than four months prior to state suit but more than four months prior to bankruptcy, but state court did not take possession of property, proceeds of sale under bankruptcy not distributable according to state statute.

102 U. S. 263-268, 26 L. 164, ROGERS v. PALMER.

Syl. 1 (IX, 1077). Attorney's knowledge of insolvency is client's.

Approved in In re Pease, 129 Fed. 455, where trust company through its attorney, who also represented creditors of merchant, made loan to merchant with which he paid clients of attorney, and company took stock under mortgage and sold it next day, mortgage was void under Bankr. Act 1898, § 67e; Wright v. Cotten, 140 N. C. 8, 52 S. E. 143, knowledge of son, who acted as father's general financial agent, that debtor was insolvent was knowledge of father in receiving preference.

102 U. S. 273-278, 26 L. 152, EAST TENNESSEE ETC. R. R. CO. v. HAMBLEN CO.

Syl. 1 (IX, 1078). Tax immunity—Foreclosure purchaser.

Approved in Lake Drummond Canal Co. v. Commonwealth, 103 Va. 347, 49 S. E. 509, applying rule under statute authorizing foreclosure purchaser to form corporation with all rights and privileges of old.

102 U. S. 278-293, 26 L. 138, BUCHANAN v. LITCHFIELD.

Syl. 2 (IX, 1078). Limiting municipal indebtedness.

Approved in Board of County Commrs. v. Gillett, 9 Okl. 598, 60 Pac. 278, it is good defense to action on county warrant for payment of county clerk's salary that at time services performed and warrant issued county debts exceeded limit fixed by Act Cong. July 30, 1886, § 4; Martin v. Territory, 5 Okl. 194, 48 Pac. 108, applying rule where warrants issued for debts of provisional government in excess of limit authorized by act of Congress of 1886; City of Guthrie v. New Vienna Bank, 4 Okl. 211, 38 Pac. 10, holding void, c. 14, Okl. St., attempting to impose provisional debts of certain towns on city of Guthrie, as conflicting with 24 Stat. 171, c. 818, § 4, limiting amount of municipal indebtedness; Eaton v. Mimnaugh, 43 Or. 474, 73 Pac. 757, holding void Gen. Laws 1903, p. 104, relating to relocation of county seat and providing for erection of courthouse payable by county warrants and directing tax levy therefor.

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Syl. 3 (IX, 1079). Municipal debt limit—Determination of property.

Approved in City of Guthrie v. New Vienna Bank, 4 Okl. 216, 38 Pac. 11, where there is no assessment of property for tax purposes, there is no power to incur indebtedness.

Syl. 4 (IX, 1079). Bonds in excess of debt limit void.

Approved in Corbet v. Rocksbury, 94 Minn. 402, 103 N. W. 14, bond in hands of bona fide purchaser issued by township under act prescribing assessment-roll as determinative of amount of authorized issue, which on face exceeds limit of issue, is void as to excess, irrespective of recitals; City of Guthrie v. New Vienna Bank, 4 Okl. 218, 38 Pac. 12, holding void c. 14, Okl. St., imposing provisional debts of certain towns on city of Guthrie as conflicting with 24 Stat. 171, c. 818, § 4, limiting amount of municipal indebtedness.

Syl. 7 (IX, 1081). Municipal bonds—Recitals—Debt limit.

Approved in Green Co. v. Shortell, 116 Ky. 125, 75 S. W. 254, where statute authorized issuance of county railroad aid bonds and county issued bonds on specified conditions to be performed by road, which were not printed on bonds but appeared on records, noncompliance with conditions is defense against purchaser.

Syl. 8 (IX, 1081). Law not changed for special cases.

Approved in City of Guthrie v. New Vienna Bank, 4 Okl. 221, 38 Pac. 13, holding void c. 14, Okl. St., imposing provisional debts of certain towns on city of Guthrie, as conflicting with 24 Stat. 171, c. 818, § 14, limiting amount of municipal indebtedness.

102 U. S. 294-300, 26 L. 153, LOUISIANA v. WOOD.

Syl. 1 (IX, 1082). Recovery of payments for void city bonds.

Approved in Frank v. Butler Co., 139 Fed. 122, county railroad bonds issued on vote of people without registration and certification required by constitution and statutes are not enforceable against county by holders; In re Waterloo Organ Co., 134 Fed. 348, 67 C. C. A. 327, where corporation pledged bonds to bank as security for credit on agreement that corporation could sell bonds at par, and on payment of proceeds bank would release bonds, bonds were valid claims against corporation's bankrupt estate; In re Waterloo Organ Co., 134 Fed. 344, 67 C. C. A. 255, where corporation president gave note to stockholder for stock and latter indorsed note to secretary, who gave him order on corporation's trustee for bonds, but note not collected and bonds not entered as debt, bonds void and not allowable against corporation's bankrupt estate; Chelsea Sav. Bank v. City of Ironwood, 130 Fed. 412, 413, 66 C. C. A. 230, where city issued bonds subsequently adjudged invalid for irregularity in issuance, and sold same to firm, which paid part of price and resold them, holder could sue city for consideration received by it, to exclusion of receiver for firm; School Dist. No. 1 v. School Dist. No. 7, 33 Colo. 47, 78 Pac. 691, Const., art. 15, § 12, prohibiting passage of law imposing on people of any county or municipal subdivision of state

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new liability with respect to past transactions, does not apply to governmental subdivisions of state or county; School City of Rushville v. Hayes, 162 Ind. 197, 70 N. E. 136, where statute under which school district issued bonds is void, district not estopped to deny validity of bonds.

Syl. 2 (IX, 1083). Restitution—County obtaining money unauthorized.

Approved in City of Guthrie v. Territory, 1 Okl. 198, 31 Pac. 193, 11 L. R. A. 418, upholding power of legislature to provide for payment by village corporation which succeeds provisional government of debt of latter; State v. Knoxville, 115 Tenn. 183, 90 S. W. 291, where census enumerators made false reports as to scholastic population, whereby city received school money in excess of amount to which it was entitled, state could recover such moneys.

102 U. S. 300-313, 26 L. 87, SIMS v. EVERHARDT.

Syl. 5 (IX, 1085). Infant's estoppel—Assertion of majority.

Approved in Kirkham v. Wheeler-Osgood Co., 39 Wash. 424, 81 Pac. 871, in action for injuries to minor servant it is immaterial that at time of employment he represented himself to be fourteen years old.

102 U. S. 318-322, 26 L. 180, LANAHAN v. SEARS.

Syl. 2 (IX, 1086). Forced sale of homestead.

Approved in King v. Davis, 137 Fed. 239, Va. Code 1887, § 3566, providing that lis pendens shall not affect bona fide purchaser until memorandum filed with clerk of court in county where land lies, does not apply to federal courts.

102 U. S. 333-369, 26 L. 113, HUNNICUTT v. PEYTON.

Syl. 5 (IX, 1087). Sale of Mexican grant.

Approved in Allen v. Parmalee, 142 Fed. 363, construing instrument as act of sale of Mexican grant; Surghenor v. Ranger, 133 Fed. 458, 461, construing instrument by which purchaser of Mexican land concession agreed, before land selected, to sell land, as act of sale passing title.

Syl. 9 (IX, 1088). Scope of adverse possession—Defective title.

Approved in United States Min. Co. v. Lawson, 134 Fed. 772, 67 C. C. A. 587, bill to quiet title alleging ownership of mining claim and possession of surface is sufficient though it alleges defendant has, through underground workings, entered and removed ore beneath surface of claim; Haggart v. Ranney, 73 Ark. 352, 84 S. W. 706, actual possession of land under instrument giving color of title to it and to adjacent tract does not give constructive possession of latter tract as against true owner.

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102 U. S. 370-371, 26 L. 121, DRAPER v. DAVIS.

Syl. 1 (IX, 1089). Power of lower court over supersedeas.

Approved in McCourt v. Singers-Bigger, 150 Fed. 105, supersedeas is matter of right; Mackenzie v. Pease, 146 Fed. 744, circuit court of appeals may, during term, vacate order allowing appeal inadvertently entered; Lockman v. Lang, 132 Fed. 4, where appeal allowed by taking security within statutory time, failure to issue citation within time prescribed for appeal is not fatal to appellate jurisdiction; Clarke v. Eureka Co. Bank, 131 Fed. 146, where supersedeas bond accepted, writ of error allowed and citation issued, motion to increase bond is within exclusive jurisdiction of appellate court; Simpson v. First Nat. Bank, 129 Fed. 259, 260, 63 C. C. A. 371, where appeal allowed on condition that petitioner give bond in fixed amount, assignment of errors filed before or at time of acceptance of bond is in time.

102 U. S. 372-375, 26 L. 213, UNITED STATES v. ATHERTON.

Syl. 3 (IX, 1090). Setting aside land patent for fraud.

Approved in Le Marchel v. Teegarden, 133 Fed. 827, following rule; Tetrault v. Fournier, 187 Mass. 62, 72 N. E. 352, allegations of bill to set aside foreclosure for fraud and for accounting, stating that plaintiff delayed in bringing suit by negligence of attorney, are no excuse for ten years' delay; Alabama etc. Ry. Co. v. Thomas, 86 Miss. 42, 38 So. 773, general allegations of fraud on information and belief are insufficient in bill to set aside foreclosure sale; Paine v. Foster, 9 Okl. 254, 53 Pac. 122, refusing to review decision of Land Department because Secretary of Interior imposed upon by attorney for townsite claimants who filed brief without notice to contestant; Cummings v. McDermid, 4 Okl. 279, 44 Pac. 278, applying rule where award of townsite trustees attacked; King v. Thompson, 3 Okl. 648, 39 Pac. 467, refusing to charge holder of legal title as trustee for petitioner for town lot awarded by townsite trustees where fraud not shown to have been practiced by board and findings of fact by board not set out.

(IX, 1090.) Miscellaneous. Cited in Butte v. Igleheart Bros., 137 Fed. 502, 70 C. C. A. 76, refusal to permit amendment of bill must be plainly shown to be abuse of discretion to authorize inquiry on appeal.

102 U. S. 378-408, 26 L. 167, 219, UNITED STATES v. SCHURZ.

Syl. 1 (IX, 1091). Mandamus—Issuance as original writ.

Approved in United States v. Lake Shore etc. Ry. Co., 197 U. S. 542, 49 L. 871, 25 Sup. Ct. 538, circuit court has no jurisdiction over original mandamus proceeding to compel interstate carrier to make report to interstate commerce commission; McDaid v. Territory, 1 Okl. 96, 30 Pac. 439, territorial courts may issue mandamus to compel townsite trustees to execute deed to claimant in whose favor they have decided.

Syl. 3 (IX, 1091). Land patent—Delivery—Passing of title.

Approved in United States v. Laam, 149 Fed. 585, delivery not necessary to passing of title where land patent issued on decision of land officers, and recorded in Land Department record-book.

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Syl. 5 (IX, 1091). Mandamus to control judicial action.

Approved in Dever v. Humphrey, 68 Kan. 765, 75 Pac. 1039, where legislature provides for appointments on certain officers and boards, courts cannot supervise exercise of such authority; Kalyton v. Kalyton, 45 Or. 130, 78 Pac. 333, arguendo.

Syl. 6 (IX, 1092). When title to public lands passes.

Approved in Humbird v. Avery, 195 U. S. 504, 49 L. 297, 25 Sup. Ct. 123, refusing to determine, in advance of final action of Land Department, respective rights of grantees from railroad of land claimed to be within indemnity limits and pre-emptioners; Jones v. Hoover, 144 Fed. 221, courts will interpose to give or maintain possession where possession essential to complete purchase; Peyton v. Desmond, 129 Fed. 8, 63 C. C. A. 651, homestead patentee may recover value of timber wrongfully cut after initiation of claim and prior to issuance of patent; Johnson v. Pacific Coast S. S. Co., 2 Alaska, 237, where townsite patent issued to trustee, Interior Department cannot set aside patent issued by trustee to wrong person; Sims v. Morrison, 92 Minn. 346, 100 N. W. 90, where prior to patent homestead entryman sold timber on land and contest entered, and afterward contestant bought off homesteader and entered land under timber act, purchaser of timber cannot sue to impress land with trust; Sage v. Rudnick, 91 Minn. 334, 100 N. W. 108, after filing of map of location by railroad, pendency of controversy over land grant before Interior Department did not suspend running of limitations; Bockfinger v. Foster, 10 Okl. 502, 62 Pac. 803, refusing to entertain petition to declare resulting trust where townsite trustees have not conveyed title; Adams v. Couch, 1 Okl. 35, 26 Pac. 1015, Land Department not interfered with by courts pending contest of adverse claims; dissenting opinion in Paine v. Foster, 9 Okl. 290, 291, 60 Pac. 33, majority refusing to review award of townsite trustees.

Syl. 7 (IX, 1093). Mandamus controls ministerial duty.

Approved in McDaid v. Territory, 1 Okl. 98, 30 Pac. 440, territorial courts may issue mandamus to compel townsite trustees to execute deed to claimant, in whose favor they have decided; Clement v. Graham, 78 Vt. 319, 63 Atl. 155, granting mandamus to compel state auditor to permit taxpayer to inspect public records of office. See 98 Am. St. Rep. 874, note.

Syl. 8 (IX, 1094). Mandamus to compel delivery of patent.

See 98 Am. St. Rep. 873, note.

Distinguished in Flanagan v. Forsythe, 6 Okl. 239, 50 Pac. 156, exemption from liability for debts of lands entered as homestead does not apply after final certificate issued.

Syl. 10 (IX, 1094). Costs against government official.

Approved in Wadsworth v. Boysen, 148 Fed. 780, suit to enjoin Indian agent from obstructing complainant in prospecting on reservation lands for purpose of locating mining claim is not suit against United States, though defendant claims to be acting officially; Western Coal etc. Co. v.

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Petty, 132 Fed. 604, where federal action against joint trespassers dismissed as to one and plaintiff sued him in state court and reversed judgment, which was satisfied, and defendant, in federal court, amended answer to show such satisfaction, and plaintiff dismissed, defendant entitled to costs.

102 U. S. 415-422, 26 L. 187, DANIELS v. TEARNEY.

Syl. 4 (IX, 1096). Estoppel—Reliance on void law.

Approved in Grand Rapids & I. R. Co. v. Osborn, 193 U. S. 29, 48 L. 604, 24 Sup. Ct. 310, railroad incorporating under general state act is estopped to contest validity under federal constitution of provisions regulating rates which formed one of burdens attached by act to privilege of incorporation; Chicago v. Cicero, 210 Ill. 302, 71 N. E. 361, upholding Hurd's Rev. St. 1901, p. 347, § 26, relating to sanitary districts; Minneapolis etc. Ry. Co. v. Gowrie etc. Ry. Co., 123 Iowa, 546, 99 N. W. 183, railroad which is about to be crossed by another and which elects to compel interlock under Code, § 2073, cannot attack validity of statute requiring it to pay portion of expense of maintaining interlock; Succession of Dauphin (Choppin v. Dauphin), 112 La. 136, 36 So. 298, refusing to entertain suit by heirs of first wife of deceased for half of property alleged to be community, and fraudulently abstracted from succession, after executor discharged; Reiger v. Faber, 116 Mo. App. 129, 92 S. W. 185, where, after sale under deed of trust, grantor filed statutory bond and sued to enjoin beneficiary from taking possession, and latter denied validity of bond and injunction dissolved, latter estopped from asserting validity of bond and suing thereon; United States Fidelity etc. Co. v. Ettenheimer, 70 Neb. 151, 99 N. W. 653, one executing appeal bond in unlawful detainer cannot defend action on bond because statute under which appeal taken was void; McVey v. Peddie, 69 Neb. 527, 96 N. W. 167, and Stevenson v. Morgan, 67 Neb. 210, 108 Am. St. Rep. 631, 93 N. W. 181, both upholding action on appeal bond given pursuant to void statute; Territory v. Cooper, 11 Okl. 707, 69 Pac. 816, applying principle when one of sureties signed bond after conviction and in action on bond insisted on application of different law to defeat bond; Morrison v. Atkinson, 16 Okl. 576, 85 Pac. 473, one assuming position and asserting legal right in district court is estopped to deny legality of position on appeal; Rhea v. Shields, 103 Va. 312, 49 S. E. 72, where proceedings for sale of land of minors are irregular, minors filing amended pleading after majority requesting sale of property are estopped from objecting to validity of sale; Smith v. Seattle, 41 Wash. 62, 82 Pac. 1098, where city sued to ascertain value of property to be damaged by regrade of street and paid award after court had instructed jury to deduct special benefits, it cannot urge invalidity of law authorizing proceedings in justification of assessment for special benefits; Le Comte v. Freshwater, 56 W. Va. 341, 49 S. E. 241, holding party estopped to deny boundary where answer in proceedings by guardian to lease land agreed to description set forth in petition; dissenting opinion in Jones v. Stoddart, 8 Idaho, 227, 67 Pac. 655, arguendo.

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(IX, 1095.) Miscellaneous. Cited in Lamb v. Powder River Livestock Co., 132 Fed. 440, 65 C. C. A. 570, 67 L. R. A. 558, subsequent law unreasonably restricting enforcement of judgment rendered on contract impairs objection.

102 U. S. 426-441, 26 L. 189, McELRATH v. UNITED STATES.

Syl. 6 (IX, 1099). Settlement of government official's accounts.

Approved in National Contracting Co. v. Sewerage etc. Board, 141 Fed. 331, where city contract required contractor to use certain kind of cement, but no quantity specified nor price, fact that contractor used inferior grade does not give city right to recover for difference between cost of two kinds after paying for work.

Distinguished in Walker v. United States, 139 Fed. 418, where marshal rendered accounts against United States for services of deputies, which were allowed, audited and paid, government cannot recover such sums years after he has gone out of office.

102 U. S. 442-451, 26 L. 193, SWIFT v. SMITH.

Syl. 1 (IX, 1100). Notes—Purchaser before maturity—Suspicion.

Approved in Union Nat. Bank v. Neill, 149 Fed. 714, where note, when presented to petitioner for discount, was signed on face by three persons, fact that name of partnership subsequently adjudged bankrupt appeared as second signer was not notice that firm signed only as surety; First Nat. Bank v. Moore, 148 Fed. 957, holding evidence did not show that indorser for value before maturity, through whom plaintiff claimed, took note with knowledge of want of consideration and that it was obtained by fraud; Ford v. Brown, 114 Tenn. 479, 88 S. W. 1039, where certificate of deposit drawn to one as "trustee" and wrongfully indorsed by him before maturity, indorsee put on notice; Unaka Nat. Bank v. Butler, 113 Tenn. 585, 83 S. W. 657, where check drawn November 24th, indorsed in blank and lost, merchant who accepted it before December 1st from unknown customer believed to be payee is bona fide holder.

Syl. 4 (IX, 1101). Redemption—Trust deed.

Approved in County of Logan v. McKinley etc. Trust Co., 70 Neb. 414, 101 N. W. 993, right to redeem from tax sale may be raised by objection to motion to confirm sale made pursuant to decree barring redemption.

102 U. S. 451-460, 26 L. 141, PENNSYLVANIA R. R. CO. v. ROY.

Syl. 2 (IX, 1101). Carrier's liability for injuries to passenger.

Approved in International Mercantile etc. Co. v. Smith, 145 Fed. 893, upholding instruction in action for injuries by steamer passenger sustained by falling from berth; Fillingham v. St. Louis Transit Co., 102 Mo. App. 584, 77 S. W. 317, holding electric street railway liable for injuries to passenger while alighting from car on to uneven ground; Williams v. Spokane Falls etc. Ry. Co., 39 Wash. 88, 89, 80 Pac. 1102, 1103, upholding instruction in action for injury to passenger that it was

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carrier's duty to carry plaintiff safely so far as human care and skill enabled it to be done.

Syl. 4 (IX, 1102). Carrier of passengers—Injuries in Pullman.

Approved in Robinson v. Chicago etc. R. R. Co., 135 Mich. 259, 97 N. W. 691, railroad sued jointly with sleeping-car company for death of passenger cannot complain of direction of verdict for car company; Dunn v. Pennsylvania R. R. Co., 71 N. J. L. 25, 58 Atl. 165, holding railroad liable for injuries to passenger through collision with cars which had been put on tracks through negligence of other company, which used tracks in common with defendant; Nashville etc. Ry. Co. v. Lillie, 112 Tenn. 343, 105 Am. St. Rep. 947, 78 S. W. 1058, railroad is liable for loss of valise carried by passenger into sleeping-car and placed under berth.

Syl. 5 (IX, 1103). Damages—Pecuniary condition of plaintiff.

Approved in American Car etc. Co. v. Brinkman, 146 Fed. 716, objection to questions as improper and immaterial is insufficient; Seattle Elec. Co. v. Hartless, 144 Fed. 381, in action by widow and daughter for wrongful death of husband and father, evidence as to physical condition of plaintiffs is inadmissible; St. Louis etc. Ry. Co. v. Adams, 74 Ark. 328, 109 Am. St. Rep. 85, 85 S. W. 768, admission of evidence as to size of family of plaintiff in personal injury case is reversible error; Louisville etc. R. R. Co. v. Collinsworth, 45 Fla. 406, 33 So. 514, in action for injuries to employer he cannot testify as to what family he has; Maynard v. Oregon R. R. Co., 46 Or. 21, 78 Pac. 986, 68 L. R. A. 477, in action for injuries to passenger through collision, evidence as to number and ages of his family is inadmissible; dissenting opinion in St. Louis etc. Ry. Co. v. Adams, 74 Ark. 335, 109 Am. St. Rep. 85, 86 S. W. 289, majority affirming judgment in personal injury case, where evidence of size of plaintiff's family erroneously admitted.

Syl. 6 (IX, 1104). Appeal—Admission of incompetent evidence—Instruction.

Approved in Krause v. United States, 147 Fed. 451, applying rule in prosecution for murder; Swift v. Johnson, 138 Fed. 872, in action for death by wrongful act, where father is sole beneficiary and evidence of mother's expectancy admitted, it is reversible error to refuse instruction that no damages recoverable for loss sustained by mother; National Biscuit Co. v Nolan, 138 Fed. 9, 70 C. C. A. 436, reversing verdict in personal injury case where plaintiff permitted to testify she depended on herself for support; Lazier Gas Engine Co. v. Du Bois, 130 Fed. 838, 65 C. C. A. 172, holding in action for breach of contract erroneous admission of evidence respecting certain profits sued for cured by charge directing jury to disregard it; Drury v. Territory, 9 Okl. 412, 60 Pac. 105, ordering new trial in murder case where illegal evidence admitted and subsequently withdrawn and legal evidence uncertain; Southern R. Co. v. Simmons, 105 Va. 659, 661, 55 S. E. 462, error in admission of evidence that plaintiff in action for personal injuries had wife and child

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not cured by admission of evidence that he was married or by instruction as to measure of damages.

102 U. S. 472-533, 26 L. 197, MERIWEATHER v. GARRETT.

Syl. 1 (IX, 1106). Property held for public—City debts.

Approved in Buell v. Arnold, 124 Wis. 69, 102 N. W. 339, judgment against county is not lien on land bought in by county for taxes.

Syl. 3 (IX, 1107). Taxation dependent on legislature.

Approved in Kersey v. Terre Haute, 161 Ind. 474, 68 N. E. 1029, upholding city ordinance taxing vehicles using streets, though street-cars, automobiles and vehicles of nonresidents omitted; Kettle v. Dallas, 35 Tex. Civ. 638, 80 S. W. 877, 878, upholding amendment to Dallas charter authorizing council to create improvement districts.

Syl. 4 (IX, 1108). Collection of taxes—Judicial power.

Approved in Buster v. Wright, 135 Fed. 956, 68 C. C. A. 505, Indian agent may close business of noncitizens within Creek nation who refuse to pay permit taxes.

Syl. 5 (IX, 1108). Compelling collector to collect taxes.

Distinguished in Graham v. Folsom, 200 U. S. 252, 253, 50 L. 468, 469, 26 Sup. Ct. 245, county auditors and treasurers whose duty it is to collect and assess taxes may be compelled by mandamus to pay judgment on township bonds though township organization abolished.

Syl. 6 (IX, 1108). Repeal of municipal charter.

Approved in Greer Co. v. Texas, 197 U. S. 243, 49 L. 739, 25 Sup. Ct. 437, legal title to Texas lands patented to Greer county for school purposes did not pass to Oklahoma corporation organized from same territory, but were vested in state of Texas; Pepin Tp. v. Sage, 129 Fed. 660, 64 C. C. A. 169, where village created by special act from territory partly in city and partly in township previously created, and later such special act repealed, statutes creating city and township were still in force.

Syl. 7 (IX, 1108). Appointment of receiver to collect taxes.

Approved in Marra v. San Jacinto etc. Irr. Dist., 134 Fed. 791, where irrigation district organized under Cal. St. 1887, p. 29, as amended by Stat. 1891, p. 142, issued and sold bonds, holder thereof securing judgment and return of execution unsatisfied cannot have receiver appointed.

Syl. 8 (IX, 1108). Right to repeal municipal charter.

Approved in Attorney General v. Springwells Tp. Board, 143 Mich. 532, 107 N. W. 91, upholding Local Acts 1905, p. 1068, No. 627, providing for annexation of territory to Detroit; Adams v. Kuykendall, 83 Miss. 594, 35 So. 835, upholding Acts 1894, c. 34, p. 29, appointing state revenue agent to supervise action of county and municipal tax officers; Van Cleve v. Passaic Valley Sewerage Commrs., 71 N. J. L. 225, 58 Atl. 587, upholding right of legislature to revoke act under which city of Paterson authorized to empty sewage into Passaic river; Brocken-

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brough v. Board of Water Commrs., 134 N. C. 19, 46 S. E. 33, waterworks of city transferred pursuant to act of 1899 to board of commissioners to manage works and turn over surplus income to city treasurer are not liable to execution for city debts; dissenting opinion in Ex parte Lewis, 45 Tex. Cr. 41, 108 Am. St. Rep. 951, 73 S. W. 825, majority holding void Galveston special charter creating board of commissioners, three of whom are appointed by governor.

102 U. S. 534-541, 26 L. 221, WADSWORTH v. SUPERVISORS OF EAU CLAIRE CO.

Syl. 1 (IX, 1111). Railroad aid—County debt limit.

Approved in Farmers' Loan etc. Co. v. Sioux Falls, 131 Fed. 912, where amendment of 1902 to Const. S. D., art. 13, § 4, required additional municipal debt for waterworks must be authorized by majority vote, city could not issue bonds on note taken prior thereto under statute providing that majority determined by vote for mayor at preceding city election.

102 U. S. 541-545, 26 L. 224, LORD v. GOODALL ETC. STEAMSHIP CO.

Syl. 1 (IX, 1111). Commerce—Liability of ocean vessels.

Approved in dissenting opinion in Western Union Tel. Co. v. Hughes, 104 Va. 245, 51 S. E. 226, majority holding, where points of transmission and destination of telegram were same state, fact that part of transmission was over line in another state did not make business interstate.

102 U. S. 556-563, 26 L. 229, GORDMAN v. NIBLOCK.

Syl. 2 (IX, 1114). Assignment of government claims.

Approved in Nutt v. Knut, 200 U. S. 20, 50 L. 353, 26 Sup. Ct. 216, illegality of clause in contract for prosecution of claim against United States making payment for services lien on claim does not invalidate part of contract providing for payment for services of percentage of allowance.

Syl. 4 (IX, 1115). Judgment—Service by publication.

Approved in Miller v. Ahrens, 150 Fed. 648, complainant in suit to enforce claim to land and remove cloud therefrom may sue in district in which property located and join nonresidents of district; York Co. Sav. Bank v. Abbot, 131 Fed. 983, suit by lessee against nonresident lessor to enforce rights under lease by requiring election to buy building or sell land, or have court make election, is within jurisdiction of circuit court for district where land situated.

102 U. S. 564-571, 26 L. 232, GEORGE v. TATE.

Syl. 3 (IX, 1115). Bond—Fraud touching execution.

Approved in Heck v. Missouri Pac. Ry. Co., 147 Fed. 781, fact that plaintiff induced to sign release by false representation as to its contents does not avoid it as defense where he failed to read it; Levin

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v. Northwestern Nat. Ins. Co., 146 Fed. 77, in federal law action on insurance policy, award of arbitrators fixing amount of plaintiff's loss, made in accordance with policy cannot be impeached for fraud of arbitrators; Levi v. Mathews, 145 Fed. 154, in federal action at law to recover money due on contract, answer alleging fraud in procuring contract should be stricken out; Lefler v. New York Life Ins. Co., 143 Fed. 817, in action at law on written unambiguous instrument, parol evidence of negotiations preceding its execution is inadmissible to vary terms; Stephenson v. Supreme Council A. L. H., 130 Fed. 492, where beneficiary in life policy after death of insured was induced by false statements of insurer to settle claim, remedy in federal court is in equity; Bush v. Prescott etc. Ry. Co., 76 Ark. 501, 89 S. W. 88, fact that one fraudulently induced to compromise action might obtain relief by motion to reinstate does not oust equity jurisdiction to cancel compromise; Colonial etc. Mortg. Co. v. Jeter, 71 Ark. 188, 71 S. W. 947, applying principle in action on rent notes; Broyles v. Absher, 107 Mo. App. 178, 80 S. W. 705, under plea of non est factum to note, defendant may show that, through illiteracy, by misreading paper to him, instrument other than one intended by him was fraudulently substituted; State v. Stuart, 111 Mo. App. 493, 86 S. W. 475, arguendo.

102 U. S. 572-575, 26 L. 234, WILSON v. McNAMEE.

Syl. 3 (IX, 1116). Recovery of pilotage—State law.

Approved in In re Clyde S. S. Co., 134 Fed. 99, suit may be brought in admiralty for damages from vessel at fault for collision on high seas for death from sinking of other ship, where recovery for wrongful death given by state to which both vessels belonged.

Syl. 4 (IX, 1116). State pilot legislation.

Approved in Olsen v. Smith, 195 U. S. 341, 49 L. 229, 25 Sup. Ct. 52, upholding Texas pilotage laws.

102 U. S. 577-586, 26 L. 235, BENNETT v. LOUISVILLE ETC. R. R. CO.

Syl. 1 (IX, 1117). Negligence—Liability to license.

Approved in De Haven v. Hennessy Bros. & Evans Co., 137 Fed. 476, 69 C. C. A. 620, determining liability of contractor for public building to citizen injured while visiting building in course of erection through invitation; St. Louis etc. Ry. Co. v. Dooley, 77 Ark. 567, 92 S. W. 791, where railroad constructs steps over right of way fence and impliedly invites persons to cross same, it is liable for injuries caused by unsafe condition of steps resulting from failure to use ordinary care in keeping them in safe condition; Carr v. Missouri Pacific Ry. Co., 195 Mo. 227, 92 S. W. 878, where licensee walking near railroad track was struck by shoe-brake which flew from passing train, railroad not liable; Stevens v. United Gas & Elec. Co., 73 N. H. 169, 60 Atl. 853, where plaintiff employed by contractor on construction of power-house for defendant and plaintiff went on staging while at work, defendant liable for failure to protect him from high voltage wires near staging; True v. Meredith

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Creamery, 72 N. H. 156, 55 Atl. 894, applying rule where customer of creamery was injured by breaking of belt while watching another being weighed, plaintiff waiting for separation of cream; Matthews v. Seaboard etc. Ry. Co., 67 S. C. 511, 46 S. E. 339, 65 L. R. A. 286, holding railroad liable for injuries to one using path over right of way in ignorance of dangers where railroad had long acquiesced in use of path; dissenting opinion in Hotchkin v. Erdrich, 214 Pa. St. 466, 63 Atl. 1037, majority holding where plaintiff sent by his employer to fix cap on chimney for defendant, and ladder fixed inside placed at his disposal, and ladder broke, defendant not liable.

Distinguished in Mayne v. Chicago etc. Ry. Co., 12 Okl. 18, 69 Pac. 935, holding railroad not liable for injuries to prospective passenger who was compelled to go over obstruction because crossing blocked by freight train.

Syl. 3 (IX, 1120). Negligence—Inference of invitation.

Approved in Sloss Iron etc. Co. v. Tilson, 141 Ala. 161, 37 So. 430, in action for injuries to one who went on defendant's premises by invitation, burden of showing invitation is on plaintiff; Archer v. Union Pac. R. R. Co., 110 Mo. App. 353, 85 S. W. 935, where excursionist with others engaged car for transportation to another place and return, and went into car for own accommodation while on switch, before time for return, he was not passenger.

102 U. S. 586-603, 26 L. 253, SPRINGER v. UNITED STATES.

Syl. 2 (IX, 1120). Distraint for taxes.

Approved in Scottish Union etc. Ins. Co. v. Bowland, 196 U. S. 632, 49 L. 628, 25 Sup. Ct. 345, upholding distraint of personal property of foreign insurance company's personalty under Ohio Rev. St., § 1095, to satisfy personal taxes.

102 U. S. 603-612, 26 L. 246, UNITED STATES v. CHOUTEAU.

Syl. 3 (IX, 1121). Compromise with government—Penalty.

Distinguished in United States Fidelity etc. Co. v. United States, 150 Fed. 554, conviction and imprisonment of Indian agent for malfeasance in office is not bar to suit by government on bond to recover money unaccounted for.

Syl. 4 (IX, 1121). Penalty involves punishment.

Approved in State v. Warner, 197 Mo. 659, 94 S. W. 964, act of 1905, requiring fines for violation of game law to be paid into treasury for benefit of game protection fund, violates constitutional provision that fines and penalties shall belong to county school fund.

102 U. S. 612-620, 26 L. 259, CRAMER v. ARTHUR.

Syl. 2 (IX, 1122). Proclamation of value of foreign coins.

Approved in Stone v. Whitridge, 129 Fed. 37, 64 C. C. A. 47, where Secretary of Treasury directs collector of customs to reliquidate on basis of commercial value of foreign coin, action of collector is reviewable by

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general appraisers and courts under §§ 14, 15, Custom's Admin. Act, 1890.

Syl. 4 (IX, 1122). Tariff—Value of foreign money.

Distinguished in United States v. Whitridge, 197 U. S. 143, 49 L. 698, 25 Sup. Ct. 406, arguendo.

102 U. S. 620-623, 26 L. 262, AUFFINORDT v. RASIN.

Syl. 1 (IX, 1123). Statutes—Retrospective construction.

Approved in Grunsfeld Bros. v. Brownell, 12 N. M. 201, 76 Pac. 312, act of 1889, to prevent preferences by persons contemplating insolvency, not suspended by bankruptcy act so as to preclude setting aside fraudulent conveyance made prior to bankruptcy act.

102 U. S. 625-634, 26 L. 122, WELLS v. SUPERVISORS.

Syl. 2 (IX, 1124). Municipal railroad aid bonds.

Approved in dissenting opinion in Sluder v. St. Louis Transit Co., 189 Mo. 194, 88 S. W. 673, majority holding St. Louis ordinance providing that motorman shall keep watch for vehicles and that on first appearance of danger shall stop car as soon as possible, valid without its acceptance by railroad.

Syl. 4 (IX, 1124). Exclusive mode of discharging liability.

Cited in Jones v. Horn, 104 Mo. App. 711, 78 S. W. 640, arguendo.

102 U. S. 641-647, 26 L. 266, KAHN v. CENTRAL SMELTING CO.

(IX, 1125.) Miscellaneous. Cited in Marks v. Gates, 2 Alaska, 523, holding grubstake contract not to be mining partnership.

102 U. S. 647-650, 26 L. 290, TRIMBLE v. WOODHEAD.

Syl. 1 (IX, 1126). Bankruptcy—Property fraudulently transferred.

Approved in Bush v. Export Storage Co., 136 Fed. 921, bankruptcy trustee cannot recover property of bankrupt fraudulently transferred where it has passed into hands of bona fide holder prior to adjudication; Northwestern etc. Ins. Co. v. Kidder, 162 Ind. 391, 70 N. E. 492, 66 L. R. A. 89, where insolvent corporation was in hands of receiver at time liability on policy insuring managing stockholder accrued, insurance company could not interplead beneficiary and creditors of corporation, who asserted claim to proceeds of policy; Moore Mfg. Co. v. Billings, 46 Or. 404, 80 Pac. 424, creditor having no special lien on property cannot maintain creditor's bill to set aside fraudulent transfer by bankrupt.

102 U. S. 651-658, 26 L. 291, BARRETT v. HOLMES.

Syl. 1 (IX, 1127). Following state statutory construction.

Approved in Southern Pac. Co. v. Western Pac. Ry. Co., 144 Fed. 179, determining title to Oakland waterfront.

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102 U. S. 658-663, 26 L. 250, WHITE v. MINERS' NATIONAL BANK.

Syl. 2 (IX, 1129). Parol to explain indorsement.

Approved in Smith v. Bayer, 46 Or. 146, 147, 79 Pac. 498, indorsee of note for collection may sue thereon in own name.

102 U. S. 672-686, 26 L. 271, HARTMAN v. GREENHOW.

Syl. 1 (IX, 1130). Review—Decision by divided court.

Cited in State v. Sunapee Dam Co., 72 N. H. 115, 55 Atl. 900, arguendo.

Syl. 2 (IX, 1130). State's contracts—Release by statute.

See 101 Am. St. Rep. 162, note.

Syl. 3 (IX, 1131). Review of denial of mandamus.

Approved in In re Epley, 10 Okl. 643, 64 Pac. 21, judgment granting peremptory mandamus is reviewable on appeal.

Syl. 6 (IX, 1131). Tax on bonds—Coupons.

Approved in State ex rel. Louisiana Imp. Co. v. Board of Assessors, 111 La. 986, 993, 36 So. 92, 95, general law directing taxation of all property, including "bonds" and "credits," does not include public credits of municipality by which tax is demanded.

Syl. 7 (IX, 1132). Mandamus—Receipt of coupons for taxes.

Approved in Woodworth v. Old Second Nat. Bank, 144 Mich. 339, 107 N. W. 906, mandamus proceedings are "civil actions" within statute providing for change of venue in civil cases; State v. Chittenden, 127 Wis. 494, 107 N. W. 508, independent proceeding commenced by writ of certiorari is action under Rev. St., 1898, § 2595.

102 U. S. 686-691, 26 L. 277, SHARPE v. DOYLE.

Syl. 1 (IX, 1132). Bankruptcy—Seizure of fraudulent conveyance.

Approved in In re Knopf, 144 Fed. 253, bankruptcy court after petition in bankruptcy may order custodian to take possession of property pending adjudication, though in possession of adverse claimant.

102 U. S. 691-707, 26 L. 238, COUNTY OF MOBILE v. KIMBALL.

Syl. 1 (IX, 1133). Commerce—Nonaction by Congress.

Approved in United States v. Union Bridge Co., 143 Fed. 393, United States may require alteration of bridge as obstruction to navigation of interstate stream, though it was built under state authority; United States Express Co. v. State, 164 Ind. 204, 73 N. E. 104, upholding Burns' Ann. St. 1901, § 3312a, requiring express companies to deliver package to persons to whom same is directed within limits of cities of certain population; dissenting opinion in Northern Securities Co. v. United States, 193 U. S. 371, 48 L. 714, 24 Sup. Ct. 436, majority holding combination of stockholders in two competing interstate railroads to form stockholding corporation which should acquire control of such railroads in exchange for its own stock, violates anti-trust act.

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Syl. 3 (IX, 1135). Commerce—State harbor improvements.

Approved in Globe Elevator Co. v. Andrew, 144 Fed. 879, holding void Laws Wis. 1905, p. 37, as amended by Laws Sp. Sess. 1905, p. 19, providing for inspection and grading of grain at Superior and prohibiting sales under Minnesota grades; Hart v. State, 100 Md. 610, 60 Atl. 462, upholding act of 1904, requiring carriers to provide separate cars for negroes and whites, as affecting intrastate passengers; Kansas City etc. R. R. Co. v. Wiygul, 82 Miss. 231, 33 So. 967, 61 L. R. A. 578, act of Cong. 1899, prohibiting creating obstruction to navigable water not expressly authorized by statute, does not take from railroad which, under state authorization, has constructed bridge, implied power to make repairs; Hagan v. City of Richmond, 104 Va. 731, 3 L. R. A. (N. S.) 1120, 52 S. E. 388, under U. S. Comp. St. 1901, p. 3546, authorizing Secretary of War to remove obstructions to navigation, where he fails so to do, local authorities may protect domestic commerce by keeping waters open.

Syl. 4 (IX, 1136). County river bonds—Public use.

Approved in Voris v. Pittsburg Plate Glass Co., 163 Ind. 607, 70 N. E. 252, upholding Burns' Rev. St. 1894, § 4290, taxing lots for improvements according to frontage and assessing abutting lots back to distance of one hundred and fifty feet; Dodge Co. v. Saunders Co., 70 Neb. 451, 100 N. W. 934, under Comp. St. 1901, c. 78, § 87, county may be required to contribute toward repair of bridge abutting in such county, though it is located mainly in another county; Horton v. City of Newport, 27 R. I. 288, 294, 61 Atl. 761, 763, upholding act requiring payment of salaries of Newport police commissioners from city funds.

Syl. 5 (IX, 1137). Public work—Raising means.

Approved in Northern Securities Co. v. United States, 193 U. S. 336, 48 L. 700, 24 Sup. Ct. 436, combination of stockholders of two competing interstate railroads to form stockholding corporation which should acquire control of stock in such railroads, in exchange for its own stock, violates anti-trust act; St. Louis etc. Ry. Co. v. Davis, 132 Fed. 633, upholding assessment of railroad property by Arkansas railroad assessors pursuant to Sand. & H. Dig., §§ 6464-6473, which provide time and place for assessment and for public hearing.

Syl. 7 (IX, 1138). Dismissal without prejudice as bar.

Approved in Robinson v. American Car etc. Co., 142 Fed. 171, and Robinson v. American Car etc. Co., 135 Fed. 696, 68 C. C. A. 331, both applying rule to suit for infringement of patent; State v. Sunapee Dam Co., 72 N. H. 123, 55 Atl. 904, where, in suit to restrain owner of dam from operating it so as to injure other shore owners, injunction denied, court had jurisdiction to ascertain damages to plaintiff; Newberry v. Ruffin, 102 Va. 76, 45 S. E. 734, dismissal without prejudice leaves whole subject of litigation open to suit.

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Syl. 10 (IX, 1138). Commerce includes what.

Approved in Howard v. Illinois etc. R. Co., 148 Fed. 1000, and Brooks v. Southern Pac. Co., 148 Fed. 991, both holding void employer's liability act of 1906; dissenting opinion in Northern Securities Co. v. United States, 193 U. S. 379, 385, 48 L. 717, 720, 24 Sup. Ct. 436, majority holding combination of stockholders in two competing interstate railroads to form stockholding corporation, which should acquire control of stock in such railroads in exchange for its own stock, violates anti-trust act.

102 U. S. 707-735, 26 L. 279, TILGHMAN v. PROCTOR.

Syl. 1 (IX, 1139). Patents—Anticipation.

Approved in American Sales Book Co. v. Carter Crume Co., 150 Fed. 336, Beck patent No. 647,934, for manifolding sales book, is void for anticipation; Universal Brush Co. v. Sonn, 146 Fed. 533, Morrison patent No. 717,014, for method of making brushes, is infringed by method of Sonn patent No. 791,510; National Enameling etc. Co. v. Enameling Co., 139 Fed. 653, construing Claus patent No. 527,361, for enameling metal ware; Manhattan etc. Co. v. Helios-Upton Co., 135 Fed. 788, holding void Baker patent No. 684,165, for method of regulating electric circuits; Chisholm v. Fleming, 133 Fed. 930, upholding Chisholm patent No. 421,244, for improvement in method of hulling peas.

Syl. 2 (IX, 1140). Patent for process.

Approved in Expanded Metal Co. v. Bradford, 136 Fed. 872, upholding Golding patent No. 527,242, for process of making open metal work by expanding sheet metal.

Syl. 4 (IX, 1141). Process patent—Description.

Approved in Comptograph Co. v. Universal etc. Mach. Co., 142 Fed. 543, upholding Feet patent No. 628,176, for improvement in computing machines; Eastern Paper Bag Co. v. Continental Paper Bag Co., 142 Fed. 493, holding Liddell patent No. 558,969, for paper-bag machine, not anticipated by Claussen patent No. 598,497.

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CIII UNITED STATES.

103 U. S. 5-11, 26 L. 302, HALL v. WISCONSIN.

Syl. 2 (X, 10). Commissioner to survey not public officer.

Approved in United States v. Schlierholz, 137 Fed. 621, special agent of Land Department appointed under appropriation act for protection of timber, not an "officer of the United States," within Rev. St., § 5481, punishing extortion.

103 U. S. 11-21, 26 L. 439, DENNICK v. CENTRAL R. R. CO.

Syl. 1 (X, 8). Action for wrongful death is transitory.

Approved in Walker v. Globe etc. Co., 140 Fed. 310, copyright protected by common-law remedies of action for damages, though special remedy provided by statute; Anglo-American etc. Co. v. Lombard, 132 Fed. 750, 68 C. C. A. 89, cause of action given by laws of Kansas to creditor of corporation which has suspended business against stockholder, arises in Kansas, not where stockholder resides; Reeves v. Southern Ry. Co., 121 Ga. 565, 49 S. E. 676, 67 L. R. A. 803, holding nonresident could sue foreign corporation in Georgia for tort committed in Alabama; Christiansen v. Graver Tank Works, 223 Ill. 150, 79 N. E. 101, holding in action brought in Illinois for injury caused by negligence in Iowa, law of latter state determines liability; Illinois etc. Ry. Co. v. Eblin, 114 Ky. 825, 71 S. W. 921, holding railroad company liable in civil action, for negligently failing to provide feeding facilities for horses, though federal statute imposed a penalty therefor; Rick v. Saginaw Bay Towing Co., 132 Mich. 240, 102 Am. St. Rep. 422, 93 N. W. 633, holding in action brought in Michigan upon injury caused by negligence in Canada, liability determined by law of Canada; Bergman v. Inman, 43 Or. 462, 99 Am. St. Rep. 771, 72 Pac. 1087, holding in action in Oregon for conversion of logs taken in Washington and brought into Oregon, statute of limitations began to run on their removal from Oregon; Dennis v. Atlantic Coast Line R. R. Co., 70 S. C. 258, 106 Am. St. Rep. 746, 49 S. E. 870, applying North Carolina statute of limitations as to action for wrongful death; Whitlow v. Nashville etc. Ry. Co., 114 Tenn. 356, 84 S. W. 620, holding action by administrator in Tennessee maintainable for death occurring under wrongful death statute in Alabama; Morrisette v. Canadian Pacific Ry. Co., 76 Vt. 272, 56 Atl. 1103, enforcing Canadian law as to contributory negligence and assumption of risk by servant; dissenting opinion in Slater v. Mexican National R. R. Co., 194 U. S. 134, 48 L. 906, 24 Sup. Ct. 581, majority holding liability under Mexican statute for periodical pay-

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ments to widow and next of kin not enforceable in Texas, procedure not being adapted to enforcement of right.

Distinguished in Slater v. Mexican National R. R. Co., 194 U. S. 126, 48 L. 903, 24 Sup. Ct. 581, holding not only obligation but also extent of the liability determined by law where death occurred; Casey v. St. Louis Transit Co., 116 Mo. App. 266, 269, 91 S. W. 430, 431, holding Missouri statute imposing liability of $5,000 for wrongful death created a penalty and strictly construed, and action for less amount not maintainable, overruling Marsh v. Kansas City etc. Ry. Co., 104 Mo. App. 584, 78 S. W. 286, holding such statute not penal and allowing recovery of less amount than therein specified.

Syl. 2 (X, 10). Enforcement of foreign statute by administrator.

Approved in Williams v. Camden etc. Ry. Co., 138 Fed. 574, 577, 578, holding Kentucky personal representative could sue there for death occurring under wrongful death statute in Ohio, though he could have sued in Ohio; Stockwell v. Boston & M. R. Co., 131 Fed. 154, holding cause of action for wrongful death occurring under statute in New Hampshire maintainable by personal representative in Vermont, where deceased was domiciled; In re Estate of Coe, 130 Iowa, 310, 106 N. W. 744, holding money recovered by Iowa administrator for wrongful death occurring in Illinois distributed according to law of Illinois, and not of former state where deceased domiciled; Roman v. Capital City Brick etc. Co., 125 Iowa, 599, 101 N. W. 440, 106 Am. St. Rep. 323, 68 L. R. A. 132, holding Iowa administrator could maintain action under wrongful death act in that state, though sole heir of deceased was a nonresident alien; Hartley v. Hartley, 71 Kan. 694, 81 Pac. 505, holding, where wrongful death act of Iowa provides damages recovered "shall be disposed of as personal property belonging to estate of deceased," money recovered by Kansas administrator, where deceased was domiciled, distributed according to laws of Kansas; Vance v. Railroad Co., 138 N. C. 463, 50 S. E. 861, holding letters of administration issued in North Carolina for purpose of suing for wrongful death occurring there, are valid, though deceased resided elsewhere and left no property in that state; Gottlieb v. North Jersey St. Ry. Co., 72 N. J. L. 484, 63 Atl. 340, holding the fund recovered not a part of deceased's estate, but is a trust for benefit of persons named in the act; Bain v. Northern Pacific Ry. Co., 120 Wis. 416, 98 N. W. 243, holding action for wrongful death occurring in Minnesota could be brought by administrator in Wisconsin.

Distinguished in Sanbo v. Union Pac. Coal Co., 130 Fed. 53, Colorado administrator cannot maintain action for wrongful death based on Wyoming statute in courts of former state.

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103 U. S. 22-25, 26 L. 360, PREWIT v. WILSON.

Syl. 1 (X, 12). Fraud imputed to grantee upon adequate consideration

Approved in First Nat. Bank v. Follett, 20 Colo. App. 380, 80 Pac. 150, holding conveyance to one creditor in satisfaction of her claim with intent to defraud others cannot be set aside unless first creditor knew of fraudulent intent.

Syl. 2 (X, 12). Marriage is adequate consideration.

Approved in Savage v. Savage, 141 Fed. 349, holding trust deed to secure payment of amount of alimony to former wife for her life in consideration that she release the lien of the alimony from other property not affected by later remarriage.

103 U. S. 40-44, 26 L. 317, BAMBERGER v. TERRY.

Syl. 4 (X, 15). Submission not vacated by amendment.

Approved in Bainum v. American Bridge Co., 141 Fed. 180, allowing amendment of complaint short time before trial to state defendant to be a corporation of New York instead of New Jersey, there having been no doubt on either side as to the real parties; Dunn v. Mayo Mills, 134 Fed. 805, 67 C. C. A. 450, allowing amendment of complaint at trial by substituting a true copy of the contract sued on for an unsigned and inaccurate one that had been inserted.

103 U. S. 49-62, 26 L. 347, SPRING CO. v. KNOWLTON.

Syl. 2 (X, 16). No recovery where illegal contract executed.

Approved in Harriman v. Northern Securities Co., 197 U. S. 296, 49 L. 763, 25 Sup. Ct. 493, holding corporate stock illegally transferred to a holding corporation in exchange for its stock cannot be recovered back; dissenting opinion in Stewart v. Wright, 147 Fed. 343, majority holding money lost by betting on races fraudulently fixed can be recovered.

Syl. 3 (X, 16). No action upon illegal contract.

Distinguished in Camors-McConnell Co. v. McConnell, 140 Fed. 414, holding, where defendant had sold his business agreeing not to engage in competing business, fact that purchase was part of scheme to secure monopoly no defense to action to enjoin defendant from so engaging.

Syl. 4 (X, 16). Consideration of executory contract recoverable.

Approved in Knapp v. Knapp, 118 Mo. App. 705, 96 S. W. 301, holding where intestate delivered money to another as bailee for purpose of defrauding creditors, his administratrix could recover it; Fairbanks, Morse & Co. v. City of North Bend, 68 Neb. 566, 94 N. W. 540, holding money deposited on making bid for municipal contract can be recovered where bid illegally allowed; Monahan v. Monahan, 77 Vt. 148, 59 Atl. 173, 70 L. R. A. 935, holding securities which plain-

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tiff had placed in name of his son to avoid taxation, but not intending son to have them, can be recovered from latter who obtained possession of them secretly; Urwan v. Northwestern etc. Ins. Co., 125 Wis. 362, 103 N. W. 1106, holding where insurance contract illegal under statute prohibiting discriminations, premiums paid thereunder could be recovered.

103 U. S. 62-66, 26 L. 369, MITCHELL v. OVERMAN.

Syl. 3 (X, 18). Court may make nunc pro tunc order.

Approved in Stern v. Bennington, 100 Md. 346, 108 Am. St. Rep. 433, 60 Atl. 18, holding court may order nunc pro tunc entry of judgment, where clerk had omitted to enter it when made; Oliver v. Love, 104 Mo. App. 84, 78 S. W. 338, where finding on plaintiff's claim set aside and that on counterclaim allowed to stand, interest allowed on counterclaim from verdict on it.

Syl. 4 (X, 18). Entry of decree nunc pro tunc.

Approved in Roberts v. Wessinger, 69 S. C. 284, 48 S. E. 248, decree of special judge rendered out of county in which he held court after term in which case marked "heard" on last day of term referred to day it was marked; Rushton v. Woodham, 68 S. C. 114, 46 S. E. 944, applying rule where opinion announced prior to qualification of officers of new county and decree filed afterward.

103 U. S. 66-71, 26 L. 428, STOUT v. LYE.

Syl. 4 (X, 20). Foreclosure decree binds mortgagor's assignee.

Approved in Rothschild v. Leonhard, 33 Ind. App. 460, 71 N. E. 675, in suit to reform deed executed by defendant and to quiet plaintiff's title, right of plaintiff not affected by subsequent conveyance by defendant.

Syl. 5 (X, 20). Foreclosure unaffected by later judgment.

Approved in Seaboard Air Line Ry. Co. v. Trust Co., 125 Ga. 465, 54 S. E. 140, holding after decree of foreclosure and sale under railroad mortgage, intervention not allowed which seeks to bring in claim having priority to mortgage bonds and also to set up defense that bonds issued without consideration.

Syl. 9 (X, 21). Judgment on merits concludes issues.

Approved in Kittel v. Trustees etc. Improvement Fund, 139 Fed. 955, where trustees of swamp lands agreed to convey to railroad, to which legislature made grant, when lands patented to state, and on foreclosure in which trustees made defendants, they did not contend that title was in United States, succeeding trustees estopped in later suit to enforce certificate to say that title was in United States; Georgia etc. Co. v. Wright, 132 Fed. 917, former judgment holding tax against railroad company invalid because corporate charter granted exemption, held bar as to question of exemption in later suit to enforce taxes for different year.

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103 U. S. 71-74, 26 L. 305, UNITED STATES v. HOUGH.

Syl. 1 (X, 21). Charge partly erroneous properly refused.

Approved in Chicago etc. Ry. Co. v. Roddy, 131 Fed. 718, 65 C. C. A. 470, holding request for instruction containing two propositions, one of which is unsound, properly refused.

Syl. 2 (X, 22). Surety's obligation restricted.

Approved in Swift v. Jones, 135 Fed. 439, holding guarantor on contract for employment of another not liable where contract also provided employee should give fidelity bond, which was not procured.

103 U. S. 74-79, 26 L. 430, WALL v. COUNTY OF MONROE.

Syl. 1 (X, 22). County warrants prima facie evidence.

Approved in Apache Co. v. Barth, 6 Ariz. 23, 53 Pac. 189, holding in suit on county warrant verified answer denying legal execution of warrants does not overcome prima facie presumption of their validity.

Syl. 2 (X, 22). County warrants transferable, but not negotiable.

Approved in Coleman v. Borough of New Kensington, 140 Fed. 686, holding action may be brought on vouchers given for materials furnished by borough, instead of on contract under which they were furnished; Fidd v. Village of Highland Park, 141 Mich. 71, 104 N. W. 394, holding village warrant in hands of bona fide holder subject to defense that street work for which it was issued was never completed; Crawford v. Board of Commrs., 8 Okl. 456, 58 Pac. 618, where, after claim allowed and warrant issued, appeal taken on behalf of county and judgment obtained declaring claim void, the judgment is binding on transferee of warrant.

103 U. S. 80-86, 26 L. 318, ALLEN v. LOUISIANA.

Syl. 2 (X, 24). When invalid part of statute severable.

Approved in United States v. Ju Toy, 198 U. S. 263, 49 L. 1044, 25 Sup. Ct. 644, holding act making decision of department final as to right of person to enter country, applies as well where he claims to be a citizen of this country as to other cases; Cella Com. Co. v. Bohlinger, 147 Fed. 423, holding state statute allowing summons against any foreign corporation, whether doing business in state or not, to be served on auditor of state, not valid as to foreign corporation doing business in state; McDonald v. Doust, 11 Idaho, 37, 81 Pac. 68, holding legislature not having power to abolish a county recognized by constitution, an act seeking to abolish such county and establish two new ones in its place cannot be held valid as to one new county only.

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103 U. S. 90-98, 26 L. 310, BOOGHER v. NEW YORK LIFE INS. CO.

Syl. 2 (X, 26). Federal statutes govern supreme court review.

Approved in Francisco v. Chicago & A. R. Co., 149 Fed. 359, federal supreme court will not review nonsuit voluntarily procured, even though it would have been reviewed by state supreme court.

Syl. 4 (X, 26). Record must show jury waived.

Approved in Anglo-American etc. Co. v. Lombard, 132 Fed. 740, 68 C. C. A. 89, where supreme court reviewed judgment rendered on special findings, there being written stipulation waiving jury.

Syl. 6 (X, 27). Referee's findings not reviewable.

Approved in Swift v. Jones, 145 Fed. 493, holding in action in federal circuit court judge not authorized to order trial of facts before special master.

103 U. S. 99-104, 26 L. 443, NATIONAL BANK v. WHITNEY.

Syl. 4 (X, 28). Ultra vires loans binding on parties.

Approved in Third Nat. Bank v. Buffalo German Ins. Co., 193 U. S. 588, 48 L. 803, 24 Sup. Ct. 524, law prohibiting national banks from making loan or discount on security of its own stock cannot be invoked by debtor in such loan; Waterbury v. McKinnon, 146 Fed. 739, holding no defense in suit to foreclose mortgage that real owner thereof fraudulently had it executed to nonresident to avoid taxation; Brigham v. Peter Bent Brigham Hospital, 134 Fed. 527, 67 C. C. A. 393, government alone can object to devise to corporation in excess of its legal capacity to hold property; Tidwell v. Chiricahua Cattle Co., 5 Ariz. 362, 53 Pac. 195, conveyance by settler on public land to corporation can be attacked on ground corporation could not acquire public land only by government in direct proceeding; Schoonover v. Petcina, 126 Iowa, 267, 100 N. W. 493, holding mortgage notes taken by president of national bank in his own name and indorsed to bank belong to and assessable to bank, though without authority to take such security, and though president thereby became indorser for larger amount than law allowed; State v. American Book Co., 69 Kan. 10, 13, 76 Pac. 414, 415, 1 L. R. A. (N. S.) 1041, holding contract made with foreign corporation before it complied with laws enabling it to do business in the state binding on both parties; Farmers' Nat. Bank v. Western Pa. Fuel Co., 215 Pa. St. 119, 64 Atl. 375, holding, in action by bank for rent, it is not defense that bank had no authority to own buildings and rent offices.

103 U. S. 118-145, 26 L. 327, RAILROAD v. SCHUTTE.

Syl. 5 (X, 32). Contracts interpreted according to language.

Cited in Flaherty v. Fleming, 58 W. Va. 671, 52 S. E. 858, holding, in construing grant of "free right of way for alleyway twelve feet wide," owner of servient tenement had no right to construct fence or gate therein.

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Syl. 7 (X, 33). Case authority on points decided.

Approved in Union Pac. R. R. Co. v. Mason City etc. R. R. Co., 199 U. S. 166, 50 L. 137, 26 Sup. Ct. 19, opinion of court assigning two grounds for decision is authority as to each; Clark v. Knox, 32 Colo. 353, 76 Pac. 375, where two defenses to action passed upon and upheld, though first alone would have decided case, the second is res adjudicata between parties; dissenting opinion in Hall v. Madison, 128 Wis. 145, 146, 107 N. W. 35, 36, majority restricting authority of former decision to actual question decided, and holding statute allowing women to vote at elections pertaining to school matters allowed them to vote on question of issuing school bonds.

103 U. S. 155-164, 26 L. 374, TILLEY v. COUNTY OF COOK.

Syl. 1 (X, 33). Offer must be accepted unconditionally.

Approved in Four Oil Co. v. United Oil Producers, 145 Cal. 625, 79 Pac. 367, 68 L. R. A. 226, where acceptance of offer imposed condition not stated in offer there was no contract.

Syl. 3 (X, 34). Unreasonable custom not binding.

Approved in McSherry v. Blanchfield, 68 Kan. 312, 75 Pac. 122, not error to reject evidence of custom in interpreting contract, it not appearing that one contracting party knew of it.

Distinguished in Lillard v. Kentucky Distilleries etc. Co., 134 Fed. 182, 67 C. C. A. 74, holding under written contract for sale of distillery slops as feed for cattle, evidence of custom as to manner of delivery admissible.

103 U. S. 168-205, 26 L. 377, KILBOURN v. THOMPSON.

Syl. 1 (X, 34). Due process of law defined.

Approved in Taylor v. Crawford, 72 Ohio St. 570, 74 N. E. 1068, 69 L. R. A. 805, upholding 95 Ohio Laws, p. 155, § 3, providing for cleaning and repairing of public drains and watercourses.

Syl. 3 (X, 35). Can Congress punish for contempt?

Cited in Ex parte Parker, 74 S. C. 470, 55 S. E. 124, holding committee appointed by legislature to investigate affairs of state dispensary may commit witness for contempt in refusing to answer questions.

Syl. 4 (X, 35). Power of Congress to compel attendance.

Approved in In re Conrades, 112 Mo. App. 33, 85 S. W. 154, committee appointed by municipal house of delegates to investigate violations of license tax ordinances may compel witnesses to attend.

Syl. 5 (X, 36). Proceeding of Congress without jurisdiction void.

Approved in Ex parte Caldwell, 138 Fed. 496, house of delegates of West Virginia having no power to carry on investigation could not punish witness for not obeying subpoena; dissenting opinion in

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In re Conrades, 112 Mo. App. 45, 85 S. W. 158, majority holding investigating committee of municipal house of delegates could compel witnesses to attend.

Distinguished in Application of Bunkers, 1 Cal. App. 67, 81 Pac. 750, holding member of state Senate committee for investigation of affairs of certain corporations punishable for accepting bribe for vote in such committee, Senate having power to make such investigation.

Syl. 6 (X, 36). Powers of government departments exclusive.

Approved in McCray v. United States, 195 U. S. 55, 49 L. 95, 24 Sup. Ct. 769, tax imposed on artificially colored oleomargarine being within power of Congress cannot be declared invalid by courts; State v. Rogers, 71 Ohio St. 217, 73 N. E. 462, holding act constituting judges of court a commission to fix salaries of county surveyors invalid.

Cited in State v. Bates, 96 Minn. 115, 104 N. W. 711, holding statute providing for liquor licenses to be issued by county commissioners, composed in part of judicial officers not unconstitutional.

Syl. 11 (X, 38). Arrest held false imprisonment.

Approved in Stephens v. Wilson, 115 Ky. 37, 72 S. W. 339, holding three justices of peace of a county constituting minority of fiscal court of county guilty of false imprisonment in attempting to enforce attendance of another justice at meeting.

103 U. S. 205-216, 26 L. 514, BARNEY v. LATHAM.

Syl. 1 (X, 38). Acts for removal to federal courts.

Cited in Indian etc. Coal Co. v. Asheville Ice etc. Co., 135 Fed. 840, where in state court judgment for plaintiff had been affirmed as to main cause of action, but reversed as to counterclaim, case not removable for trial of counterclaim.

Syl. 3 (X, 38). When case removable as to parties.

Approved in Manufacturers' Com. Co. v. Brown Alaska Co., 148 Fed. 310, where one action brought on note against maker and several indorsers, any one nonresident defendant can remove cause of action against him to federal court; Iowa etc. Min. Co. v. Bliss, 144 Fed. 457, in action against guaranty company on fidelity bond which also seeks to hold principal liable for the embezzlement covered by the bond, former controversy separable and action removed; Cella v. Brown, 144 Fed. 757, affirming 136 Fed. 444, in suit against nonresident for specific performance of contract for allotment of bonds and securities in a reorganization scheme, a defendant bank which acted as agent in making allotments, though a resident of same state as plaintiff, not necessary party, and removal granted; Lucas v. Milliken, 139 Fed. 828, in suit for specific performance of contract

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for sale of corporate stock, for damages for its breach, and to enjoin defendant from voting the stock, the corporation not necessary party defendant and will not prevent federal jurisdiction; Boatmen's Bank v. Fritzlen, 135 Fed. 662, 663, 68 C. C. A. 288, in suit to foreclose mortgage and also to avoid prior mortgages for fraud, controversies are separable, and removal can be based upon latter; Grool v. United Elec. Co., 132 Fed. 254, 257, 261, suit by New Jersey stockholder in corporation of that state to enforce corporate claim against Pennsylvania corporation, remanded, New Jersey corporation appearing to be opposed to enforcement and aligned with defendant in controversy.

Syl. 4 (X, 41). No definite rule as to multifariousness.

Approved in Thomas v. Great Northern Ry. Co., 147 Fed. 86, error in refusing to remand case from federal court not cured by amendment of pleading which would give federal court jurisdiction; Emmons v. National etc. Assn., 135 Fed. 692, 68 C. C. A. 327, bill by stockholder in and borrower of building and loan corporation for accounting with the corporation to enjoin sale of security for the loan and to have receiver appointed for the corporation is multifarious; United Cigarette etc. Co. v. Wright, 132 Fed. 197, bill against agent for accounting not multifarious because several separate transactions growing out of agency are included; Hosmer v. Wyoming Ry. etc. Co., 129 Fed. 888, 65 C. C. A. 81, appellate court refused to reverse decree of lower court on ground of multifariousness where only prejudice was in burden of costs which could be remedied by modifying decree.

Syl. 6 (X, 41). Removal depends on pleadings.

Approved in Helena etc. Co. v. Spratt, 146 Fed. 314, where it appears from bill and answers in condemnation suit that legal title to land held by nonresident, but equitable title held by resident, removal not allowed; Laden v. Meck, 130 Fed. 879, 65 C. C. A. 361, case remanded where pleading did not show nonresident defendants to be citizens of same state.

103 U. S. 217-221, 26 L. 536, WILMOT v. MUDGE.

Syl. 1 (X, 41). Composition a proceeding in bankruptcy.

Approved in In re Friend, 134 Fed. 779, 67 C. C. A. 500, judgment confirming composition under bankrupt act of 1898 is a judgment granting discharge in bankruptcy and reviewable.

103 U. S. 222-226, 26 L. 337, RELFE v. RUNDLE.

Syl. 3 (X, 43). Charter follows corporation.

Approved in Brown v. Equitable L. Assur. Soc., 142 Fed. 843, 844, statute of New York prohibiting appointment of receiver for, or suit for accounting against insurance company unless attorney general approves same is part of charter of New York insurance corporation, and binding on stockholders residing elsewhere; Lewis v. Clark, 129

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Fed. 574, 64 C. C. A. 138, allowing receiver of corporation appointed in Wisconsin to sue in federal court in Idaho on ground of comity.

Distinguished in Great Western Min. etc. Co. v. Harris, 198 U. S. 576, 49 L. 1169, 25 Sup. Ct. 770, receiver of corporation cannot be empowered by appointing court to sue in another jurisdiction; Edwards v. National Window Glass etc. Assn., 139 Fed. 797, where receiver appointed by federal court for district of Massachusetts, but not shown to have been vested with title to property, not allowed to sue in federal court for district of New Jersey.

103 U. S. 227-237, 26 L. 462, BLAKE v. UNITED STATES.

Syl. 2 (X, 44). Removal incident of power to appoint.

Approved in Mial v. Ellington, 134 N. C. 165, 46 S. E. 972, 65 L. R. A. 697, one appointed supervisor of roads for a township for term of two years has no property or contract right in the office which cannot be taken away by legislature; dissenting opinion in Territory v. Albright, 12 N. M. 318, 78 Pac. 212, majority holding assessor appointed on March 23, 1903, pursuant to Stat. 1903, p. 80, relating to division of Bernadillo county, not entitled to office.

Syl. 4 (X, 44). President's power to supersede officer.

Cited in Hartigan v. United States, 196 U. S. 174, 49 L. 436, 25 Sup. Ct. 204, cadet in United States Military Academy not officer in army within meaning of statute forbidding President from dismissing such officer without court-martial.

103 U. S. 239-250, 26 L. 351, THE BENEFACTOR.

Syl. 1 (X, 45). Admiralty rule 56 construed.

Distinguished in The Sacramento, 131 Fed. 374, 375, admiralty rule 56 applies to proceeding to limit liability where no suit or libel for recovery is pending.

Syl. 5 (X, 46). No limited liability after satisfaction.

Cited in The Pine Forest, 129 Fed. 705, 64 C. C. A. 228, holding limited liability proceeding taken after owners have performed salvage services will not affect principle that, being owners of vessel at fault, they cannot claim salvage.

103 U. S. 261-278, 26 L. 539, OSCANYAN v. ARMS CO.

Syl. 1 (X, 48). Counsel's admission dispenses with proof.

Approved in State v. Marx, 78 Conn. 27, 60 Atl. 694, where, in trial for murder, defendant admitted fact of murder and confined evidence to proving he did not do it; Missouri etc. Tel. Co. v. Vandevort, 67 Kan. 272, 72 Pac. 772, testimony of opening statement of attorney on former trial containing material admission admissible; Beard v. State, 44 Tex. Cr. 403, 71 S. W. 960, holding not error to reject evidence of good character where that fact is admitted by prosecuting attorney.

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Syl. 2 (X, 48). Court may direct verdict.

Distinguished in Redding v. Puget Sound Iron etc. Works, 36 Wash. 644, 79 Pac. 309, holding error to direct judgment for defendant where opening statement of plaintiff falls short of making out a case.

Syl. 3 (X, 49). Nonsuit same as directing verdict.

Cited in Parks v. Southern Ry. Co., 143 Fed. 278, and Huntt v. McNamee, 141 Fed. 295, both holding not error to refuse nonsuit after evidence in and defendant has moved for direction of verdict for defendant, which motion has been submitted; Smythe v. Evans, 209 Ill. 383, 70 N. E. 909, refusing to enforce contract whereby contractor, constructing plant for corporation under supervision of latter's engineer, had agreed to pay engineer a share of its profits; Gunn v. Union R. R. Co., 27 R. I. 327, 62 Atl. 121, holding statute authorizing supreme court to direct judgment without further reference to jury not invalid as depriving party of due process of law; dissenting opinion in McNeill v. Railroad Co., 135 N. C. 722, 47 S. E. 779, 67 L. R. A. 227, majority allowing recovery against railroad company for personal injuries received while riding on a pass issued in violation of law.

Syl. 4 (X, 49). Illegality provable under general issue.

Approved in Heffron v. Daly, 133 Mich. 615, 95 N. W. 715, holding in action on note given for premium on illegal contract of insurance illegality does not have to be pleaded; McGriffin, v. Coyle, 16 Okl. 652, 85 Pac. 955, where in action on note it appears from note itself and from plaintiffs' evidence to be against public policy, demurrer to evidence should be sustained.

Distinguished in Rucker v. Bolles, 133 Fed. 862, 67 C. C. A. 30, holding evidence that written contract sued on was champertous not admissible under general issue, contract not appearing so on its face.

Syl. 5 (X, 50). Contract against public policy void.

Approved in Sussman v. Porter, 137 Fed. 164, holding contract to procure consent of property owners to construction of trolley line and also franchise to operate same for contingent fee against public policy; Young v. City of Mankato, 97 Minn. 6, 105 N. W. 970, 3 L. R. A. (N. S.) 849, holding contract whereby board of freeholders appointed to draft municipal charter agreed to pay one of its members to furnish advice and prepare charter invalid; dissenting opinion in Stewart v. Wright, 147 Fed. 339, majority holding one given double cross in fake footrace may recover money wagered. See 97 Am. St. Rep. 148, note.

Distinguished in Stewart v. Wright, 147 Fed. 335, one induced by confidence men to wager money on footraces under belief that he was defrauding other members of conspiracy may recover money; Kerr v. American Pneumatic Service Co., 188 Mass. 29, 73 N. E. 857, where contract for services in procuring government contracts for construction of pneumatic tubes for carrying mail held valid.

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103 U. S. 278-280, 26 L. 447, BONDURANT v. WATSON.

Syl. 1 (X, 51). Form prescribed for writ of error.

Approved in Long v. Farmers' State Bank, 147 Fed. 361, holding writ of error from federal supreme court, in name of President of United States, attested by a judge of district court, and clerk of district court, irregular, but amendable.

103 U. S. 293-297, 26 L. 478, BARBOUR v. PRIEST.

Syl. 1 (X, 53). Mortgage of bankrupt not avoidable.

Approved in Des Moines Sav. Bank v. Morgan Jewelry Co., 123 Iowa, 438, 99 N. W. 123, and Stevenson v. Milliken etc. Co., 99 Me. 326, 59 Atl. 475, both following rule; Hardy v. Gray, 144 Fed. 925, 926, holding under facts that creditor receiving preference had reasonable cause to believe it made in fraud of bankruptcy act; Goldberg v. Harlan, 33 Ind. App. 475, 67 N. E. 711, where insolvent had transferred entire stock to surety on his note, trustee in bankruptcy could sue to recover it without previous notice to transferee; Suffel v. McCartney Nat. Bank, 127 Wis. 213, 106 N. W. 839, holding trustee in bankruptcy could not recover preferential payment though creditor knew facts that would cause reasonably intelligent man to doubt debtor's solvency.

103 U. S. 298-300, 26 L. 562, THE ILLINOIS.

Syl. 1 (X, 53). Steamer prima facie liable for collision.

Approved in Brigham v. Luckenbach, 140 Fed. 332, holding schooner not liable for collision because she held her course.

103 U. S. 301-304, 26 L. 394, MOYER v. DEWEY.

Syl. 2 (X, 54). Assignee alone can recover property.

Approved in Northwestern etc. Ins. Co. v. Kidder, 162 Ind. 391, 70 N. E. 492, 66 L. R. A. 89, holding creditors of insolvent corporation could not assert right to share in proceeds of money wrongfully diverted from corporation, there being a receiver; Moore Mfg. Co. v. Billings, 46 Or. 404, 80 Pac. 424, holding creditor's bill to set aside chattel mortgage and sale thereunder, brought after adjudication in bankruptcy, does not give creditor lien as to such goods.

103 U. S. 304-316, 26 L. 481, MILES v. UNITED STATES.

Syl. 1 (X, 54). Juror challenged for religious belief.

Cited in Cochran v. United States, 147 Fed. 207, in criminal prosecutions by United States in territorial district courts questions as to right of joint defendant to separate trial and as to challenge of jurors governed by statute of territory; State v. Chenowith, 163 Ind. 99, 71 N. E. 199, in trial for involuntary manslaughter in failing to provide medical attendance to cure child, the religious belief of father that it was against teachings of Bible no defense; Ex parte Murphy, 1 Okl. 291, 29 Pac. 653, holding territorial statute governs allowing of bail pending appeal from district court of territory in criminal case on federal side of such court; Welty v. United States, 14 Okl. 16, 76 Pac.

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123, procedure in criminal case being tried in district court of territory is that prescribed by legislature of territory.

Syl. 2 (X, 55). Defendant's admission proves first marriage.

Approved in McSein v. State, 120 Ga. 176, 47 S. E. 544, where in trial for bigamy first marriage proved by admission of defendant; State v. Still, 68 S. C. 38, 102 Am. St. Rep. 657, 46 S. E. 524, applying rule in adultery; State v. Tillinghast, 25 R. I. 397, 56 Atl. 184, and State v. Nelson, 39 Wash. 226, 81 Pac. 723, both allowing parol evidence in proof of marriage; dissenting opinion in Lee v. State, 44 Tex. Cr. 370, 72 S. W. 1013, 61 L. R. A. 904, majority holding defendant guilty of rape consummated by a sham marriage.

Distinguished in Hoch v. People, 219 Ill. 278, 109 Am. St. Rep. 327, 76 N. E. 361, holding bigamous wife competent witness against one charged with murder.

Syl. 3 (X, 55). "Reasonable doubt" not definable.

Approved in State v. Blay, 77 Vt. 60, 58 Atl. 795, holding omission of court to explain term "reasonable doubt" in criminal trial not error.

Syl. 5 (X, 56). Second wife witness to bigamy.

See 106 Am. St. Rep. 769, note.

103 U. S. 316-326, 26 L. 546, LAND CO. v. SAUNDERS.

Syl. 1 (X, 56). Monuments control courses and distances.

Cited in Leonard v. Smith, 111 La. 1010, 36 So. 102, where deed describes a line as "up the west bank" of a certain bay to White Lake, and it was uncertain which of two prongs of the lake went by that name, the shortest course to objective point adopted.

Distinguished in Security Land etc. Co. v. Burns, 193 U. S. 179, 48 L. 671, 24 Sup. Ct. 425, where, upon the facts, courses and distances as set forth in patent and official map which show meander line of lake bordering land allowed to control over actual boundary of lake which was some distance away.

103 U. S. 327-330, 26 L. 339, WARD v. TODD.

Syl. 1 (X, 57). Court gives parties complete relief.

Approved in In re Blake, 150 Fed. 284, holding where trustee in bankruptcy and county each claim money in hands of bank, and on bill by bank in bankruptcy proceeding court decides in favor of county, no error for want of jurisdiction; Southern Pac. R. Co. v. United States, 133 Fed. 657, 66 C. C. A. 581, holding court of equity has jurisdiction to settle all matters involved in suit by United States against railroad company, its mortgagee and others, to adjust titles to land; In re Leeds Woolen Mills, 129 Fed. 926, holding, on petition by trustee in bankruptcy to recover goods, bankruptcy court had jurisdiction to determine adverse claims.

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103 U. S. 336-339, 26 L. 563, BLAKE v. McKIM.

Syl. 1 (X, 57). When suit not removable.

Approved in Miller v. Clifford, 133 Fed. 884, 67 C. C. A. 52, holding creditors' suit against stockholders of insolvent corporation to enforce stockholders' liability, accounting and pro rata payment to creditors, does not present a separable suit against one stockholder of another state so as to give federal jurisdiction; Mayor etc. of Savannah v. Holst, 132 Fed. 901, holding suit to enjoin municipal ordinance brought against Georgia corporations by seven citizens of Georgia and one of New York not within jurisdiction of federal courts.

Distinguished in Cella v. Brown, 136 Fed. 445, granting removal in suit for specific performance of contract, a defendant bank which acted merely as an agent not being necessary party; Boatmen's Bank v. Fritzlen, 135 Fed. 663, 68 C. C. A. 288, holding in suit to foreclose mortgage and also to avoid prior mortgage for fraud controversies are separable and removal based on latter.

103 U. S. 344-351, 26 L. 565, WEBBER v. VIRGINIA.

Syl. 2 (X, 59). Patent laws cannot displace police power.

Cited in Ozan Lumber Co. v. Union etc. Bank, 145 Fed. 345, 346, 347, and Clark Co. v. Rice, 127 Wis. 460, 106 N. W. 235, both holding state statute requiring notes taken in payment for patented articles to be in certain form invalid as discriminating against nonpatented goods of same kind; In re Sydow, 4 Ariz. 210, 211, 36 Pac. 216, upholding state license on dealers; dissenting opinion in Continental Paper Bag Co. v. Eastern Paper Bag Co., 150 Fed. 750, majority holding patentee could maintain suit to enjoin infringement of his patent though he had never put it to commercial use.

Syl. 3 (X, 60). Legislation against foreign goods void.

Cited in In re Sydow, 4 Ariz. 210, 36 Pac. 215, holding act imposing license on dealers, "except in agricultural or horticultural products of this territory, when vended by the producer thereof," is valid except as to dealers in such products from foreign states, or in products of that territory not produced by them; Bacon v. Locke, 42 Wash. 217, 83 Pac. 721, 722, statute imposing license on person who peddles out or, "after shipment to the state," sells certain goods, invalid.

103 U. S. 358-369, 26 L. 395, WOLFF v. NEW ORLEANS.

Syl. 2 (X, 63). Impairment of contracts with state.

Approved in City of Ft. Madison v. Ft. Madison etc. Co., 134 Fed. 216, 67 C. C. A. 142, holding statute providing for assessment at twenty-five per cent of actual value invalid as affecting contract between city and water company made when assessment was for full value.

103 U. S. 370-409, 26 L. 567, NEAL v. DELAWARE.

Syl. 1 (X, 64). Negroes entitled to jury duty.

Approved in Martin v. Texas, 200 U. S. 319, 50 L. 498, 26 Sup. Ct. 338, where motion to quash indictment and panel of petit jurors on

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ground of discrimination against negroes denied, not being supported by evidence.

Syl. 3 (X, 65). Recognition of federal constitution presumed.

Cited in Kentucky v. Powers, 139 Fed. 479, 480, where amendment to federal constitution conflicted with existing state statutes.

Syl. 4 (X, 65). Removal—Discrimination against negro jurors.

Approved in Kentucky v. Powers, 201 U. S. 30, 31, 50 L. 647, 26 Sup. Ct. 387, overruling 139 Fed. 454, 482, 485, and holding under sec. 641, Rev. St. (U. S. Comp. St. 1901, p. 520), where defendant pleads pardon in bar which is denied and denial sustained by highest state court having jurisdiction, no right of removal to federal courts; New Jersey v. Corrigan, 139 Fed. 761, 765, holding statute relative to qualification of grand jurors does not give right to removal under § 641, Rev. St.

Syl. 6 (X, 66). Affidavit evidence of discrimination.

Approved in Sharp v. United States, 138 Fed. 883, sustaining motion to set aside indictment where affidavit showing noncompliance with statute in selection of grand jury uncontradicted.

Syl. 7 (X, 66). Official acts within fourteenth amendment.

Approved in Owensboro Waterworks Co. v. Owensboro, 200 U. S. 45, 50 L. 364, 26 Sup. Ct. 249, refusing to enjoin municipal corporation from diverting funds collected from taxpayers for specific object, as a violation of fourteenth amendment of federal constitution; Douglas etc. Club v. Grainger, 146 Fed. 417, holding violation of fourteenth amendment of federal constitution for state racing commission to discriminate arbitrarily in granting racing licenses; Georgia R. R. etc. Co. v. Wright, 125 Ga. 603, 54 S. E. 58, holding where tax law valid, claim that it is administered unequally must be proved by clear evidence.

103 U. S. 412-417, 26 L. 518, LINCOLN v. CAMBRIA IRON CO.

Syl. 2 (X, 67). Pleading validity of municipal bonds.

Approved in Northwestern Sav. Bank v. Centreville Station, 143 Fed. 84, holding recitals in municipal bonds showing valid issue make prima facie case of validity.

103 U. S. 417-422, 26 L. 401, WILSON v. GAINES.

Syl. 1 (X, 68). Exemption from taxation not assignable.

Approved in Rochester v. Rochester Ry. Co., 182 N. Y. 118, 75 N. E. 959, 70 L. R. A. 773, holding exemption granted to railroad company from assessment for street paving does not pass to successor.

103 U. S. 426-431, 26 L. 578, RAILROAD CO. v. BALDWIN.

Syl. 1 (X, 70). Railroad grant land pre-emptable until location.

Approved in Moon v. Salt Lake Co., 27 Utah, 445, 76 Pac. 225, construing Act Cong. 1870, granting Utah Central Railroad right of way through public lands in Utah; Kneeland v. Korter, 40 Wash. 367,

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82 Pac. 611, 1 L. R. A. (N. S.) 745, holding title to tide land within limits of congressional grant to railroad company as located by construction of road passed to company; Okanogan Co. v. Cheetham, 37 Wash. 687, 80 Pac. 263, 70 L. R. A. 1027, holding federal statute granting right of way for public highways with provision for acceptance thereof by county commissioners a grant in praesenti, located and accepted by public use of a highway over public land for seven years.

Syl. 2 (X, 71). Railroad grant effective immediately.

Approved in Northern Pac. Ry. Co. v. Ely, 197 U. S. 5, 49 L. 640, 25 Sup. Ct. 302, holding railroad company having located its road under congressional grant of right of way, has superior title to subsequent settlers on any part thereof; Northern Pac. Ry. Co. v. Hasse, 197 U. S. 10, 49 L. 642, 25 Sup. Ct. 305, holding grant of right of way to railroad company effective from date of act; Oregon etc. R. R. Co. v. Quigley, 10 Idaho, 782, 783, 80 Pac. 404, holding under grant of right of way, railroad company had better title than prior settlers, who were mere occupants; Churchill v. Choctaw Ry. Co., 4 Okl. 468, 46 Pac. 505, holding under grant of right of way to railroad company, latter has better title than settlers prior to location; Sage v. Rudnick, 91 Minn. 331, 100 N. W. 107, holding adverse possession began to run against railroad on filing of map of location; dissenting opinion in Sage v. Rudnick, 91 Minn. 328, 98 N. W. 90, majority holding adverse possession did not run against railroad grantee of land while the land was in litigation in Land Department between two railroad companies, each claiming it under its grant.

103 U. S. 447-460, 26 L. 405, UNITY v. BURRAGE.

Syl. 1 (X, 74). Act legalizing bonds a public act.

Approved in White v. Bracelin, 144 Mich. 335, 337, 107 N. W. 1056, 1057, holding statute prohibiting sale of intoxicating liquor within certain distance of schools in a certain county constitutional.

103 U. S. 461-470, 26 L. 409, WICKE v. OSTRUM.

Syl. 3 (X, 75). Contrivance and not idea patentable.

Approved in Manhattan etc. Co. v. Helios-Upton Co., 135 Fed. 788, holding patent for regulating electric currents void as being merely for operative theory and not for contrivance.

103 U. S. 471-479, 26 L. 314, EDWARDS v. UNITED STATES.

Syl. 2 (X, 76). Resignation not effective until accepted.

Distinguished in State v. Popejoy, 165 Ind. 179, 74 N. E. 995, holding where county commissioners of several counties interested in a joint drainage proceeding appoint viewers to represent different counties, their resignation may be accepted in county appointing, though not the county in which proceeding commenced.

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103 U. S. 480-485, 26 L. 521, THOMPSON v. UNITED STATES.

Syl. 5 (X, 77). Mandamus not abated by expiration of term.

Approved in Utter v. Franklin, 7 Ariz. 306, 64 Pac. 429, holding mandamus to compel loan commissioners of a territory to fund bonds did not abate with expiration of their term of office; Territory v. Mayor etc. of City of Socorro, 12 N. M. 184, 76 Pac. 284, mandamus properly directed to mayor and city council to compel tax levy; Diefenderfer v. State, 14 Wyo. 309, 83 Pac. 592, where municipal officers compelled to issue bonds.

Distinguished in State v. Board of State Canvassers, 32 Mont. 17, 79 Pac. 403, holding action to compel state board of canvassers to reconvene and certify votes cast for certain office abated with expiration of term of majority of board.

103 U. S. 485-494, 26 L. 354, KERN v. HUIDEKOPER.

Syl. 1 (X, 78). Removal withdraws state court's jurisdiction.

Approved in Bryant Bros. Co. v. Robinson, 149 Fed. 326, holding motion to remand based solely on ground that proceedings for removal were irregular will be denied; Mutual Life Ins. Co. v. Langley, 145 Fed. 420, holding order of state court not necessary to removal, and enjoining further proceedings therein.

Syl. 2 (X, 79). Removal transfers whole subject matter.

Approved in Hatcher v. Hendrie etc. Co., 133 Fed. 269, 68 C. C. A. 19, holding lien obtained by attachment in suit in state court enforceable after removal as if obtained in federal court.

Syl. 4 (X, 79). State court's subsequent proceedings void.

Approved in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 245, 49 L. 464, 25 Sup. Ct. 251, where, after condemnation proceeding between corporations of different states removed to federal court, plaintiff enjoined from further proceedings in state court; Knight v. Shelton, 134 Fed. 440. holding federal court may pass upon question whether amendment to state constitution has been legally adopted if it arises in case properly before it; St. Bernard Min. Co. v. Madisonville etc. Co., 130 Fed. 795, holding after case removed from state to federal court, latter court may enjoin further proceedings in state court.

Distinguished in Stevensons v. Illinois etc. R. R. Co., 117 Ky. 859, 79 S. W. 767, holding action removed to federal court could there be dismissed without prejudice to future action in state court.

103 U. S. 494-498, 26 L. 497, DIETZSCH v. HUIDEKOPER.

Syl. 1 (X, 80). State court enjoined after removal.

Approved in Gunter v. Atlantic etc. R. R. Co., 200 U. S. 292, 50 L. 487, 26 Sup. Ct. 252, where, after federal court had enjoined collection of certain taxes, it enjoined later action in state court for

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their collection; Riverdale Cotton Mills v. Alabama etc. Mfg. Co., 198 U. S. 196, 49 L. 1015, 25 Sup. Ct. 629, holding after foreclosure decree and sale in federal court, suit in state court attacking title of purchasers at sale on ground federal court had no jurisdiction will be enjoined; Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 245, 49 L. 464, 25 Sup. Ct. 251, where, after condemnation proceeding removed to federal court, plaintiff enjoined from further proceeding in state court; Julian v. Central Trust Co., 193 U. S. 112, 48 L. 639, 24 Sup. Ct. 399, holding, after property sold on decree of foreclosure in federal court, that court will enjoin sale to satisfy judgment in state court against mortgagor; St. Louis Min. etc. Co. v. Montana Min. Co., 148 Fed. 455, Mutual Life Ins. Co. v. Langley, 145 Fed. 422, and St. Bernard Min. Co. v. Madisonville etc. Co., 130 Fed. 795, all holding on removal of case to federal court plaintiff will be enjoined from further proceedings in state court; Lehman v. Graham, 135 Fed. 42, 67 C. C. A. 513, holding sec. 720 of Revised Statutes (U. S. Comp. St. 1901, p. 581), does not prevent federal court having jurisdiction to determine suit from enjoining subsequent proceedings thereon in state court; Hatcher v. Hendrie etc. Co., 133 Fed. 270, 68 C. C. A. 19, holding where action removed to federal court after attachment lien obtained, later suit to enforce that lien is ancillary and may be brought in federal court without regard to parties; In re Mertens, 131 Fed. 515, where federal court in which bankruptcy proceeding pending enjoined suit in state court against receiver.

103 U. S. 498-515, 26 L. 498, COUNTY OF MORGAN v. ALLEN.

Syl. 1 (X, 81). Capital stock trust fund for creditors.

Approved in In re Remington etc. Motor Co., 139 Fed. 776, allowing assessment on all shares of bankrupt corporation issued for less than par value.

103 U. S. 518-520, 26 L. 486, GREEN v. FISK.

Syl. 1 (X, 83). Partition decree not final decree.

Approved in Camp Phosphate Co. v. Anderson, 48 Fla. 235, 236, 111 Am. St. Rep. 80, 81, 37 So. 725, 726, holding decree based on report of commissioners appointed to partition land that partition could not be made, ordering a sale by commissioners is final and appealable.

103 U. S. 523-540, 26 L. 340, TIPTON v. LOCOMOTIVE WORKS.

Syl. 2 (X, 84). County estopped to deny bond validity.

Distinguished in Jones v. Missouri etc. Elec. Co., 144 Fed. 775, holding where two corporations have consolidated according to statute, minority stockholder in one, who is injured by consolidation may maintain bill to set aside consolidation agreement, overruling same case, 135 Fed. 157, where such suit not allowed.

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103 U. S. 540-544, 26 L. 313, THE RICHMOND.

Syl. 1 (X, 85). On appeal, findings presumed right.

Approved in The Iroquois, 194 U. S. 247, 48 L. 960, 24 Sup. Ct. 640, where holding of two lower courts that it was duty of captain of vessel to stop at a port to afford medical attendance to injured sailor not disturbed by appellate court; Last Chance Min. Co. v. Bunker Hill etc. Co., 131 Fed. 588, 66 C. C. A. 299, refusing to disturb findings of master upon conflicting testimony approved by court.

103 U. S. 544-549, 26 L. 436, NORTHWESTERN INS. CO. v. NELSON.

Syl. 1 (X, 85). Clear evidence required to impeach deed.

Approved in McGuigan v. Gaines, 71 Ark. 618, 77 S. W. 53, applying rule in suit to reform deed for mistake; Western Loan etc. Co. v. Waisman, 32 Wash. 648, 73 Pac. 704, holding notary's certificate of acknowledgment on mortgage not overcome by testimony of mortgagors that one of them did not appear before him.

103 U. S. 554-558, 26 L. 486, SUPERVISORS v. KENNICOTT.

Syl. 1 (X, 86). Stipulated submission a waiver of jury.

Approved in Anglo-American etc. Co. v. Lombard, 132 Fed. 740, 68 C. C. A. 89, holding stipulation entitled in several cases that one finding should be signed and filed for all, and stipulation in some of them waiving jury, a sufficient waiver of jury in others.

Syl. 2 (X, 86). Agreed facts present questions of law.

Approved in Anderson v. Messinger, 146 Fed. 930, holding judgment reciting that court "does find the issues of the cause with the defendant," means issues of law only; Ammons v. Brunswick etc. Co., 141 Fed. 574, holding judgment supported by agreed statement of facts; Hulitt v. Ohio Val. Nat. Bank, 137 Fed. 465, 69 C. C. A. 609, holding court limited to facts stated in an agreed statement and a finding of court, in such case of no effect.

103 U. S. 562-574, 26 L. 411, HARTER v. KERNOCHAN.

Syl. 2 (X, 87). Removal—Real controversy alone considered.

Approved in Lucas v. Milliken, 139 Fed. 828, holding in suit for specific performance of contract for sale of corporate stock for damages for its breach, and to enjoin defendant from voting stock, the corporation not necessary party; Boatmen's Bank v. Fritzlen, 135 Fed. 658, 68 C. C. A. 288, holding suit by second mortgagee to have first mortgage declared void and to foreclose his mortgage contains separable controversy between first mortgagee on one side and other parties on other, and removable.

Syl. 4 (X, 88). Municipal bonds irregularly issued valid.

Cited in Jones v. Missouri etc. Elec. Co., 144 Fed. 775, holding where two corporations have consolidated, injured minority stock-

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holder in one may maintain bill to set aside consolidation agreement, overruling same case, 135 Fed. 157, where such suit not allowed.

103 U. S. 580-591, 26 L. 492, JARROLT v. MOBERLY.

Syl. 2 (X, 90). Municipal credit for railroads forbidden.

Approved in Ex parte Anderson, 46 Tex. Cr. 380, 81 S. W. 976, holding city charter authorizing governor to appoint board of three commissions to have control of all departments of city government unconstitutional.

103 U. S. 597, 598, 26 L. 525, SWAN v. ARTHUR.

Syl. 1 (X, 91). Tariff act given ordinary meaning.

Approved in United States v. Hoe & Co., 147 Fed. 203, holding molders' patterns for making sand molds within provision of tariff act of 1897 admitting free "patterns for machinery."

103 U. S. 599-606, 26 L. 550, KENNEDY v. INDIANAPOLIS.

Syl. 1 (X, 91). Eminent domain—When title passes.

Approved in Zimmerman v. Kansas City etc. R. Co., 144 Fed. 625, holding where owner of land taken by railroad company without legal proceedings waived trespass and sued for value of property, payment of his judgment condition precedent to title vesting in company.

103 U. S. 606-613, 26 L. 507, BABBITT v. CLARK.

Syl. 2 (X, 92). No removal after trial term.

Approved in State v. District Court, 32 Mont. 41, 79 Pac. 547, holding submission of motion for judgment on pleadings a "trial" within statute allowing plaintiff to dismiss action before trial.

103 U. S. 613-637, 26 L. 585, HOYT v. SPRAGUE.

Syl. 2 (X, 93). Partner's death—Subsequent creditors' rights.

Distinguished in Anglo-American etc. Co. v. Lombard, 132 Fed. 747, 68 C. C. A. 89, holding where Kansas corporation transferred all its property to Missouri corporation, latter assuming its debts, creditors of former by accepting benefits of transfer not estopped to assert stockholder's liability under laws of Kansas.

Syl. 3 (X, 94). State laws not exterritorial.

Approved in In re Culp, 2 Cal. App. 83, 83 Pac. 95, holding where decree of divorce awarded custody of child to mother, latter not affected by modification of decree after she had moved with child to another state.

Syl. 4 (X, 94). Guardian's authority confined to state.

Approved in In re Chace, 26 R. I. 360, 58 Atl. 982, 69 L. R. A. 493, holding under statute in Rhode Island forbidding marriage of ward

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without consent of guardian, marriage contracted in Massachusetts without consent valid.

103 U. S. 651-659, 26 L. 509, WARDELL v. RAILROAD CO.

Syl. 1 (X, 96). Directors cannot misuse corporate contracts.

Cited in McCourt v. Singers-Bigger, 145 Fed. 107, holding where director organized new corporation and obtained renewal of leases in its name, new company held leases in trust for old company; Burns v. Cooper, 140 Fed. 277, holding sale of real property by guardian invalid, purchaser having immediately thereafter conveyed to guardian; Pacific Vinegar etc. Wks. v. Smith, 145 Cal. 362, 104 Am. St. Rep. 42, 78 Pac. 552, holding corporate president having purchased note of corporation and caused its indorsement to be put on them could not sue on indorsement; Young v. City of Mankato, 97 Minn. 6, 105 N. W. 970, 3 L. R. A. (N. S.) 849, holding board of free holders appointed to draft charter cannot employ one of its members; Barnes v. Lynch, 9 Okl. 186, 59 Pac. 1007, holding deeds executed in name of corporation under agreement whereby officers had agreed to divide property between them invalid as against stockholders. See 97 Am. St. Rep. 41, note.

Distinguished in In re Castle Braid Co., 145 Fed. 230, allowing claim against insolvent corporation based on contract between corporation and one of its officers, there being no evidence of fraud or detriment to corporation.

Syl. 2 (X, 97). Directors' obligation toward stockholders.

Approved in Altalla Iron Ore Co. v. Virginia etc. Coke Co., 111 Tenn. 535, 77 S. W. 775, allowing contract made by managing officers with new corporation, formed for purpose to be repudiated by old corporation.

103 U. S. 699-703, 26 L. 599, THE CIVILTIC AND RESTLESS.

Syl. 2 (X, 103). Tug and tow liable for collision.

Distinguished in The Degama, 150 Fed. 324, holding where moving vessel collides with one moored, former presumed at fault, and defense that she was under control of tug must be both pleaded and proved, overruling same case, 140 Fed. 755, where vessel in tow held not liable for collision, she being under control of tug and no negligence appearing on her part; In re Walsh, 136 Fed. 559, 69 C. C. A. 267, holding tug lashed to side of vessel, merely supplying motive power and under command of pilot of vessel, not liable for collision.

103 U. S. 710, 711, 26 L. 467, THE CONNECTICUT.

Syl. 2 (X, 105). Tug and tow liable for collision.

Distinguished in In re Walsh, 136 Fed. 559, 69 C. C. A. 267, holding tug lashed to side of vessel and under command of vessel's pilot not liable.

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103 U. S. 7141720, 26 L. 602, PENNIMAN'S CASE.

Syl. 2 (X, 106). Act abolishing imprisonment for debt valid.

Approved in Miners etc. Bank v. Snyder, 100 Md. 65, 108 Am. St. Rep. 390, 59 Atl. 708, 68 L. R. A. 312, holding statute affecting stockholders' liability valid as to corporate debts contracted before its enactment.

103 U. S. 732-735, 26 L. 469, NATIONAL BANK v. KIMBALL.

Syl. 1 (X, 107). Tax not enjoined without tender.

Approved in Couts v. Cornell, 147 Cal. 563, 109 Am. St. Rep. 168, 82 Pac. 195, refusing to enjoin execution of tax deed on ground property misdescribed in assessment, where no offer made to pay tax; Douglas v. City of Fargo, 13 N. D. 484, 101 N. W. 924, refusing to set aside tax sale and cancel subsequent assessments, it appearing part at least of tax was valid and no tender made; Halff & Bros. v. Green, 10 Okl. 339, 62 Pac. 817, Lasaster & Noble v. Green, 10 Okl. 337, 62 Pac. 816, and Collins & Wallace v. Green, 10 Okl. 250, 62 Pac. 815, all holding collection of invalid portion of tax will not be enjoined where valid portion not tendered.

Syl. 2 (X, 107). Tax unequally levied not enjoined.

Approved in Humbird Lumber Co. v. Thompson, 11 Idaho, 628, 83 Pac. 946, refusing to enjoin sale of land for taxes, on ground that assessment was too high.

Distinguished in dissenting opinion in San Francisco Nat. Bank v. Dodge, 197 U. S. 113, 49 L. 688, 25 Sup. Ct. 384, majority refusing to enjoin collection of tax on shares of stock of national bank, on ground stock in state banks not so taxed.

103 U. S. 736, 737, 26 L. 456, HUMPHREY v. BAKER.

Syl. 1 (X, 108). Decree upon remittitur not appealable.

Approved in Taylor v. Colorado Iron Works, 33 Colo. 185, 80 Pac. 130, holding supreme court will not review on writ of error judgment entered in trial court according to directions of court of appeals; Willis v. Felton, 119 Ga. 636, 46 S. E. 858, refusing to compel trial judge to certify to bill of exceptions to judgment entered in compliance with directions of appellate court.

103 U. S. 739-744, 26 L. 456, GRINNELL v. RAILROAD CO.

Syl. 3 (X, 110). Railroad grant passes upon location.

Distinguished in Humbird v. Avery, 195 U. S. 508, 49 L. 299, 25 Sup. Ct. 123, and Sjoli v. Dreschel, 199 U. S. 566, 50 L. 312, note, 26 Sup. Ct. 154, both holding title to land within indemnity limits did not pass until selections approved by Secretary of Interior.

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103 U. S. 754-756, 26 L. 322, THE CONNEMARA.

Syl. 1 (X, 111). Decree allowing salvage claims appealable.

Approved in McDaniel v. Traylor, 196 U. S. 430, 49 L. 540, 25 Sup. Ct. 369, holding, in suit upon several claims against administrator of estate, amount in controversy is aggregate of claims.

103 U. S. 764-766, 26 L. 458, HINCKLEY v. MORTON.

Syl. 1 (X, 113). Proceedings after remittitur appealable.

Approved in McCourt v. Singers-Bigger, 150 Fed. 104, allowing appeal from judgment entered in trial court in accordance with directions of appellate court, but which had been modified by new issues, determined in trial court. See 98 Am. St. Rep. 905, note.

103 U. S. 766-769, 26 L. 607, CLARK v. KILLIAN.

Syl. 2 (X, 114). Bill of review to correct decree.

Approved in Jorgensen v. Young, 136 Fed. 381, 69 C. C. A. 222, dismissing bill of review filed after time for appeal from judgment sought to be reviewed had expired.

103 U. S. 783-786, 26 L. 459, NATIONAL BANK v. INSURANCE CO.

Syl. 1 (X, 115). Agent's overdraft—Principal not liable.

Approved in Fidelity etc. Co. v. Fidelity Trust Co., 143 Fed. 160, holding insurance society could not follow as trust fund money which its defaulting treasurer had deposited in bank in his own name.

103 U. S. 792-794, 26 L. 460, COOK v. LILLO.

Syl. 5 (X, 116). Usury reclaimable only within year.

Approved in Gunby v. Armstrong, 133 Fed. 434, 66 C. C. A. 627, holding defendant could not set off claim for usurious interest paid after one year from payment.

103 U. S. 794-797, 26 L. 461, EX PARTE RAILWAY CO.

Syl. 1 (X, 117). Errors not corrected by mandamus.

Approved in State v. District Court, 13 N. D. 219, 100 N. W. 249, refusing mandamus to compel trial court to hear and determine on merits a case it has dismissed.

103 U. S. 797-799, 26 L. 426, CROUCH v. ROEMER.

Syl. 2 (X, 118). Change of materials not patentable.

Approved in Sloan Filter Co. v. Portland Gold Min. Co., 139 Fed. 26, holding patent for barrel filter for filtering metal solutions void.

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103 U. S. 806-820, 26 L. 612, THOMPSON v. PERRINE.

Syl. 3 (X, 120). Federal courts—Validity of municipal bonds.

Approved in Board of Commrs. v. Tollman, 145 Fed. 763, holding federal court not bound by decision of state court rendered after bonds purchased, construing section of state constitution claimed to be violated by statute authorizing issue.

CIV UNITED STATES.

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104 U. S. 5-18, 26 L. 643, BALTIMORE & OHIO R. R. CO. v. KOONTZ.

Syl. 1 (X, 123). Jurisdiction—Suit against foreign corporation.

Approved in Kibbler v. St. Louis etc. R. Co., 147 Fed. 881, foreign corporation, which under state laws can be sued in state courts only in counties in which it does business, is not suable in federal court in state unless it does business in one of counties in district; Territory v. Baker, 12 N. M. 459, 78 Pac. 625, denying mandamus to compel judge to take jurisdiction of suit against foreign corporation on service on its president while traveling through state.

Syl. 2 (X, 124). Jurisdiction not dependent on citizenship.

Approved in Pyron v. Ruohs, 120 Ga. 1063, 48 S. E. 436, partnership is suable in any county in which one of partners has residence regardless of his citizenship.

Syl. 8 (X, 125). Wrongful denial of removal.

Approved in Texarkana Telephone Co. v. Bridges, 75 Ark. 120, 86 S. W. 842, filing of answer after denial of removal is not waiver of right to insist on removal.

Syl. 9 (X, 125). Removal—When state jurisdiction ends.

Approved in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 245, 49 L. 464, 25 Sup. Ct. 251, upholding removal of proceeding for taking land by eminent domain under Kentucky statute; Mutual Life Ins. Co. v. Langley, 145 Fed. 421, where proper removal petition and bond filed in time with state court's clerk and certified copy of record filed in federal court, latter court acquires jurisdiction without state court's order of transference; Boatmen's Bank v. Fritzlen, 135 Fed. 653, 68 C. C. A. 288, upholding seizure on replevin in federal court where state suit concerning same property removed to federal court.

104 U. S. 18-24, 26 L. 635, SHANKS v. KLEIN.

Syl. 1 (X, 128). Partnership realty—Firm debts.

Approved in Schlichter Jute Cordage Co. v. Mulqueen, 142 Fed. 587, where after death of partner his interest in firm, including realty,

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bought by survivor, and distributed as part of estate, and minor residuary legatees did not join in conveyance to purchaser, but on majority approved executor's final settlement, they were enjoined from enforcing ejectment judgment obtained for such interest in action at law; Runner v. Wortke, 2 Alaska, 393, one partner cannot sell partner's interest in realty standing in firm name without written authority, where no necessity shown for sale; Kennedy v. Dickey, 90 Md. 305, 57 Atl. 625, only surplus left on sale of testator's partnership realty after payment of debts and adjustment of partners' claims is distributable as realty.

104 U. S. 25-30, 26 L. 637, SMITH v. McCULLOUGH.

Syl. 3 (X, 130). Mortgage of after-acquired property.

Approved in Mallory v. Maryland Glass Co., 131 Fed. 114, mortgage of glass factory covering plant and enumerated articles and all property owned or to be afterward acquired does not cover after-acquired merchandise manufactured for sale in ordinary business. See 99 Am. St. Rep. 259, note.

104 U. S. 30-40, 26 L. 647, MARTIN v. COLE.

Syl. 1 (X, 130). Indorsement—Contemporaneous parol contract.

Approved in Crilly v. Gallice, 148 Fed. 836, conditional agreement for compromise pursuant to which debtor delivered notes indorsed by third party, who was also party to agreement, which provided for full release on payment of notes, does not discharge indorser on maker's default; Payne v. Mutual Life Ins. Co., 141 Fed. 345, binding obligation of premium note cannot be affected by contemporaneous parol agreement that it need not be paid; Kessler v. Perilloux, 132 Fed. 910, 66 C. C. A. 113, where written contract is unambiguous, parol evidence is inadmissible to show contemporaneous agreement enlarging its scope.

Distinguished in Nethercutt v. Hopkins, 38 Wash. 579, 80 Pac. 799, where defendants advised by plaintiff, who was their attorney and also that of maker, to sell notes for fifty per cent, as maker was insolvent, and they indorsed notes to plaintiff for sale, and he bought them, evidence of fraudulent representations admissible in action against defendants as indorsers.

104 U. S. 44-51, 26 L. 652, KING v. WORTHINGTON.

Syl. 2 (X, 131). Competency of witnesses in federal court.

Approved in Smith v. Au Gres Twp., 150 Fed. 263, under Rev. St., § 858, witness may testify after death of bankrupt to admissions made by bankrupt concerning estate while he was owner thereof.

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104 U. S. 52-54, 26 L. 658, DRIESBACH v. SECOND NATIONAL BANK.

Syl. 1 (X, 132). Usurious interest—Application on principal.

Approved in Gunby v. Armstrong, 133 Fed. 434, 66 C. C. A. 627, under Louisiana statute authorizing recovery back of usurious interest, unless right is asserted within limitations it cannot be pleaded as defense or setoff.

104 U. S. 54-77, 26 L. 693, CENTRAL NATIONAL BANK v. CONNECTICUT MUT. LIFE INS. CO.

Syl. 1 (X, 132). Deposit as agent—Setoff by bank.

Approved in First Nat Bank v. National Surety Co., 130 Fed. 405, 66 L. R. A. 777, where surety company insured bank against employee's dishonesty and depositor overdrew through falsification of books by bookkeeper but later deposits exceeded overdraft, surety not liable.

Syl. 2 (X, 133). Deposit of trust funds to personal account.

Approved in Fidelity etc. Co. v. Fidelity Trust Co., 143 Fed. 159, upholding equity jurisdiction over bill against depositories of funds of insolvent association arising out of association treasurer's embezzlement.

Syl. 3 (X, 133). Following trust funds—Commingling.

Approved in Smith v. Au Gres Twp., 150 Fed. 260, 265, where bankrupt, who was township trustee, used township's money to replenish stock in trade and mingled new goods with old, township had equitable lien on proceeds of sale of entire stock by bankrupt's trustee for amount appropriated; Board of Commrs. v. Patterson, 149 Fed. 232, 234, determining amount recoverable by county from bank receiver where bank cashier was county treasurer and mingled county funds with bank's; Bay State Gas Co. v. Rogers, 147 Fed. 560, where subject matter of suit consisted of profits arising out of trust, fact that amount claimed could be liquidated in cash did not deprive federal equity court of jurisdiction; In re Berry, 147 Fed. 211, where petitioner, under mistake of fact, paid A money for debt which he did not owe, and three days later petition in bankruptcy filed against him, and money deposited with A's other moneys and was paid to bankruptcy trustee, money so paid was recoverable from trustee; In re Royea's Estate, 143 Fed. 185, where petitioner intrusted money to bankrupt for safekeeping and latter deposited with his own funds, petitioner could enforce preferred claim on bank balance in hands of trustee; Southern Pine Co. v. Savannah Trust Co., 141 Fed. 808, where claimant agreed to sell boards to car company to be paid for on delivery, and it sent boards to president of company to check up on assurance that they would not be delivered before payment, but

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through oversight of employee boards delivered before payments, claimant could recover value of boards from proceeds of sale of cars made from boards and sold at bankrupt sale; Erie R. Co. v. Dial, 140 Fed. 691, where corporation ordered rubber to make tires, which was to be paid for on delivery, but corporation took rubber from railroad platform without paying drafts and used it up, assignee of shipper could recover value from corporation's bankruptcy trustee in preference to general creditors; Holder v. Western German Bank, 136 Fed. 92, 68 C. C. A. 554, where plaintiff deposited check with defendant bank for collection, which latter sent it to Bank A for collection, with instructions to remit New York Exchange, which latter did but New York bank refused to pay on instructions from A's receiver, A bank was trustee; Oswego Mill Co. v. Skillern, 73 Ark. 326, 84 S. W. 476, complaint against receiver of insolvent bank to establish preferred claim for proceeds of check received for collection must allege that proceeds of check were paid into hands of receiver; Indiana Trust Co. v. International etc. Assn., 165 Ind. 606, 76 N. E. 307, affirming, 36 Ind. App. 691, 74 N. E. 635, where treasurer of society drew check against society's funds to secretary, who opened account in his name as secretary and who did not pay moneys to treasurer each day as required by rules, payment by treasurer to secretary entitled him to credit therefor as against society; Page Co. v. Rose, 130 Iowa, 299, 106 N. W. 745, where county treasurer without authority deposited tax receipts with bank for collection, county had preferred claim against bank's insolvent estate; Brown v. Spohr, 180 N. Y. 212, 73 N. E. 17, where trust deed acknowledged receipt of trust funds by trustees and it was credited to them on books of firm to which settlor belonged, action by trustees in withdrawing funds from bank and redepositing same to credit of firm was delivery to trustee; Texas Moline Plow Co. v. Kingman etc. Implement Co., 32 Tex. Civ. 347, 80 S. W. 1045, where personalty mortgaged to different persons was sold by mortgagor and proceeds so used as to be incapable of identification, property purchased with proceeds not impressed with trust in favor of mortgagees.

Distinguished in Beugnot v. Tremoulet, 111 La. 19, 35 So. 368, where mother of minor intrusts funds of minor with one who confuses them with own, and obtains large credit thereby, latter is chargeable with interest.

Syl. 4 (X, 136). Bank's lien—Notice of equities.

Approved in First Nat Bank v. City Nat. Bank, 102 Mo. App. 363, 76 S. W. 490, where bank depositor made deposit to credit of general account and bank not notified that he intended deposit to be applied in payment of note to another bank, first bank could apply deposit to overdraft; Brookhouse v. Union Pub. Co., 73 N. H. 373, 111 Am. St. Rep. 627, 62 Atl. 222, 2 L. R. A. (N. S.) 993, where treasurer of defendant was plaintiff's guardian and withdrew funds from other sources and gave draft to assistant treasurer, who de-

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posited them, and guardian as treasurer drew money for personal benefit, defendant not chargeable with notice of trust; Interstate Nat. Bank v. Claxton, 97 Tex. 578, 80 S. W. 607, 65 L. R. A. 820, where bank permitted factor to overdraw and after his insolvency applied funds of principal to payment of debt, it was liable to principal. See 111 Am. St. Rep. 424, note.

Distinguished in Kimmel v. Bean, 68 Kan. 602, 75 Pac. 1119, 64 L. R. A. 785, bank receiving from agent moneys of principal for deposit in agent's name without notice of agency may apply same to overdraft.

Syl. 5 (X, 138). National bank's liquidation.

Approved in Muir v. Citizens' Nat. Bank, 39 Wash. 58, 80 Pac. 1007, national bank going into voluntary liquidation is not required to register subsequent transfer of stock and to issue new stock to transferee.

Syl. 6 (X, 138). Irregular pleas need not be traversed.

Approved in Bryant Bros. Co. v. Robinson, 149 Fed. 328, following rule; Computing Scale Co. v. Moore, 139 Fed. 200, where plea in equity is not properly verified, complainant should disregard plea and take decree pro confesso.

Syl. 7 (X, 139). Reversal—Failure to file replication.

Approved in Mutual Life Ins. Co. v. Blair, 130 Fed. 973, where insured died after commencement of suit to cancel policy, but before answer, whereupon action brought on policy, plea in bar alleging death and pendency of law action does present objection to want of equity.

104 U. S. 78-83, 26 L. 658, KELLY v. PITTSBURG.

Syl. 4 (X, 139). Tax of farm lands in city.

Approved in Union Refrigerator Transit Co. v. Kentucky, 199 U. S. 203, 50 L. 153, 26 Sup. Ct. 36, due process of law is denied Kentucky corporation by tax under Kentucky statute on rolling stock permanently located in other states and employed there in business; Toney v. Macon, 119 Ga. 87, 46 S. E. 82, upholding annexation act of December 13, 1900; Attorney General v. Springwell's Tp. Board, 143 Mich. 534, 107 N. W. 91, upholding Soc. Acts 1905, p. 1068, annexing territory to Detroit; Taylor v. Crawford, 72 Ohio St. 570, 74 N. E. 1068, 69 L. R. A. 805, upholding act of 1902, for cleaning and keeping in repair public ditches, drains and watercourses; Gay v. Thomas, 5 Okl. 21, 46 Pac. 584, upholding act providing for listing and assessing personalty in Indian reservations and unorganized territory at different time from that fixed for listing property in organized counties; Horton v. City of Newport, 27 R. I. 288, 294, 61 Atl. 761, 763, upholding Laws 1900-01, p. 110, c. 804, § 9, requiring payment of salaries of Newport police commissioners from funds of city.

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104 U. S. 88-92, 26 L. 662, KLEIN v. NEW YORK LIFE INS. CO.

Syl. 1 (X, 141). Life insurance—Nonpayment of premiums.

Approved in Supreme Lodge, K. of H. v. Jones, 35 Ind. App. 130, 69 N. E. 721, where member of beneficial society failed to pay February dues and creditor paid such dues after his death and received receipt therefor, society not estopped to declare forfeiture for nonpayment, it not knowing of death at time of payment.

Syl. 3 (X, 141). Equity—Insurance—Nonpayment of premiums.

Approved in Ressler v. Fidelity etc. Life Ins. Co., 110 Tenn. 415, 75 S. W. 735, where premium note stated that if not paid at maturity policy void, failure to pay note at maturity rendered policy void, though policy contained no such provision; London etc. Accident Co. v. Siwy, 35 Ind. App. 346, 66 N. E. 483, employer failing to notify insurer of action by employee for injuries until issue joined and case set for trial, does not comply with condition of policy requiring immediate notice; Metropolitan Life Ins. Co. v. Bradley, 98 Tex. 232, 82 S. W. 1031, 68 L. R. A. 509, New York statute prohibiting forfeiture of life policies for failure to pay premium unless notice mailed to insured in state does not apply where insured lived in Texas and policy there delivered, though premiums and policy payable in New York.

Distinguished in Aetna Life Ins. Co. v. Fallow, 110 Tenn. 729, 77 S. W. 939, holding accident policy provision forfeiting right for nonpayment of premiums prior to accident waived whereby custom agent requested insured to hold premiums until collector called.

104 U. S. 93-99, 26 L. 665, METCALF v. WILLIAMS.

Syl. 2 (X, 142). Equitable relief—Fraud or mistake.

Approved in Sanford v. White, 132 Fed. 535, setting aside judgment where attorney refused to call material witness and stipulated certain facts which virtually defended client's cause of action; Nelson v. Meehan, 2 Alaska, 493, where judgment obtained by fraud and perjury was affirmed on appeal, and pending final disposition of case in district court defendants by motion and affidavits disclosed fraud and perjury and moved to vacate, court had jurisdiction to vacate; Farmers' etc. Warehouse Co. v. Pridemore, 55 W. Va. 463, 47 S. E. 263, refusing to enjoin judgment on mere allegation that complainant is now able to prove his defense of action at law which he was unable to prove at trial.

Syl. 3 (X, 142). Signing check as agent—Knowledge of agency.

Approved in State Bank of St. Johns v. McCabe, 135 Mich. 484, 98 N. W. 22, where bank deals with depositor as trustee and recognizes funds standing in his name as trust funds, it cannot appropriate them to payment of trustee's individual debt to bank; Janes v. Citizens' Bank, 9 Okl. 556, 564, 60 Pac. 293, 295, admitting parol evidence to show note signed by one in official capacity as secretary of corporation that it was understood by parties that corporation was to be bound.

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104 U. S. 99-105, 26 L. 668, DUDLEY v. EASTON.

Syl. 1 (X, 143). Bankruptcy assignee as agent of secured creditors.

Approved in Sellers v. Hayes, 163 Ind. 430, 72 N. E. 122, bankruptcy trustee cannot impeach mortgage given by purchaser from bankrupt to third party.

Syl. 3 (X, 143). Bankruptcy assignee—Preferences.

Approved in Smith v. Au Gres Twp., 150 Fed. 264, determining admissibility of affidavit of bankrupt in action against trustee; First Nat. Bank v. Connett, 142 Fed. 40, if chattel mortgage, though given before, is not recorded until within four months prior to bankruptcy and under circumstances which would render it a voidable preference if it had been then given, trustee may defeat it as preference.

(X, 143). Miscellaneous. Cited in Empire State etc. Co. v. Trustee of Fisher & Co., 67 N. J. Eq. 603, 60 Atl. 940, bankruptcy trustee may avoid mortgage made by New Jersey corporation which creditors of corporation might avoid under New Jersey Corporation Act, § 64.

104 U. S. 111-112, 26 L. 703, NEVADA BANK v. SEDGWICK.

Syl. 2 (X, 144). Tax of debts due residents.

Distinguished in London & S. F. Bank v. Block, 136 Fed. 140, 69 C. C. A. 136, where foreign corporation maintained branches in other states, credits on books of San Francisco office of sums paid to other branches and charged to them as mere matter of bookkeeping were not taxable as credits in California.

104 U. S. 112-119, 26 L. 639, LEHIGH VALLEY R. R. CO. v. MELLON.

Syl. 1 (X, 144). Patents limited by claim.

Cited in Columbus Chain Co. v. Standard Chain Co., 148 Fed. 625, arguendo.

104 U. S. 126-141, 26 L. 673, BARTON v. BARBOUR.

Syl. 1 (X, 146). Recovery of property from receiver.

Approved in James Freeman Brown Co. v. Harris, 139 Fed. 109, where in replevin against receiver federal judge filed memorandum declining to try merits but rendered judgment for recovery of possession by defendant, or for value of property, judgment was res adjudicata; Western New York etc. R. Co. v. Penn. Ref. Co., 137 Fed. 360, 70 C. C. A. 23, receiver should not be joined with other railroads in action to enforce judgment for damages sustained by discrimination in freight rates in violation of interstate commerce act, where judgment would constitute personal judgment against railroads; Ridge v. Manker, 132 Fed. 602, 67 C. C. A. 596, decree against receiver of another court is not nullity subject to collateral attack merely because record fails to affirmatively show permission to suit; Johnson v. Southern B. & L. Assn., 132 Fed. 544, tax deed executed after property has passed into custody of court by its appointment of receiver for mortgagee does

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not cut off receiver's right of redemption; Payson v. Jacobs, 38 Wash. 205, 80 Pac. 430, where foreclosure brought against receiver in same court in which he was appointed, it is presumed in collateral proceeding that leave to sue was obtained.

Distinguished in Ratcliff v. Adler, 71 Ark. 271, 72 S. W. 897, action against receiver in court presided over by same judge who appointed receiver not dismissed on appeal for failure to obtain leave to sue; Isom v. Rex Crude Oil Co., 147 Cal. 667, 82 Pac. 320, where in prior state action to cancel oil lease for fraud judgment rendered for plaintiff and appointed to work oil land, and pending appeal plaintiff sued in federal court to cancel lease, and receiver not made party, federal judgment does not affect receiver's rights; Manker v. Phoenix Loan Assn., 124 Iowa, 343, 100 N. W. 38, failure to obtain leave to sue receiver is no bar to jurisdiction of law court.

Syl. 5 (X, 148). Equity—Right to jury.

Approved in Dokken v. Page, 147 Fed. 439, where bankruptcy receiver took possession of goods which bankrupt had transferred to third person and by stipulation transferee filed intervention setting up claim as bona fide purchaser, no jury required; In re Neasmith, 147 Fed. 163, failure of involuntary bankrupt to formally apply for jury in writing at or before time for answer is waiver of right to jury trial; State v. Sunapee Dam Co., 72 N. H. 126, 127, 55 Atl. 906, 907, where, in suit to restrain dam owner from interfering with rights of shore owners, court refused injunction but held plaintiffs entitled to damages, defendants not entitled to jury trial on question of damages.

Syl. 7 (X, 148). Railroad receiver—Repairs.

Approved in Castle Creek Water Co. v. City of Aspen, 146 Fed. 15, where city has refused to perform contract to purchase waterworks of company at price to be determined by appraisers, water company may bring specific performance; dissenting opinion in Gregg v. Metropolitan Trust Co., 197 U. S. 194, 49 L. 721, 25 Sup. Ct. 415, majority holding claim for ties, to repair railroad, furnished within six months of receivership, is not preferred to mortgage recorded prior to contract for ties.

104 U. S. 146-159, 26 L. 679, ST. LOUIS INS. CO. v. ST. LOUIS ETC. R. R. CO.

Syl. 1 (X, 150). Carriers—Delivery to succeeding carrier.

Approved in Pittsburgh etc. Ry. Co. v. Bryant, 36 Ind. App. 345, 75 N. E. 831, mere receipt of goods by carrier marked for delivery at point beyond its own line does not constitute contract to transport and deliver them at destination. See 106 Am. St. Rep. 606, note.

Syl. 2 (X, 150). Traffic agreements—Joint liability.

Approved in Chesapeake etc. Ry. Co. v. Stock, 104 Va. 107, 51 S. E. 164, holding connecting carrier not liable for loss not occurring on

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its portion of through route where agency not shown, though through rate guaranteed.

104 U. S. 159-170, 26 L. 686, DAVIS v. WELLS.

Syl. 1 (X, 151). Guaranty—Notice of acceptance.

Approved in Buhrer v. Baldwin, 137 Mich. 270, 100 N. W. 470, where contract of guaranty recites consideration, no notice of acceptance is necessary to bind guarantor. See 105 Am. St. Rep. 514, 515, note.

Syl. 2 (X, 151). Guaranty—Notice—Guarantee's request.

Approved in Stewart v. Sharp County Bank, 71 Ark. 588, 589, 76 S. W. 1065, 1066, where defendants guaranteed debt due plaintiff at request of latter's agent, notice of acceptance of guaranty not required.

Syl. 3 (X, 152). Guaranty—Nominal consideration.

Approved in Brewster v. Lanyon Zinc Co., 140 Fed. 807, lease in consideration of one dollar paid at time is not wanting in mutuality merely because it reserves to one party option to terminate it which it withholds from other.

Syl. 4 (X, 152). Guaranty liberally construed.

Approved in Swift v. Jones, 135 Fed. 438, where contract employing defendant's son as plaintiff's broker signed by defendant as guarantor required son to give bond, plaintiff to pay premium, and plaintiff sent son application, which he signed, but plaintiff did not get bond till after defalcation guarantor not liable.

104 U. S. 176-179, 26 L. 704, FLAGSTAFF SILVER MINING CO. v. CULLINS.

Syl. 1 (X, 153). Mechanic's lien statutes liberally construed.

Approved in United States v. American Surety Co., 200 U. S. 203, 50 L. 440, 26 Sup. Ct. 168, labor and materials furnished under contract to contractor or subcontractor are within surety bond executed under Comp. St. 1901, p. 2523, conditioned for prompt payment by contractor to all persons supplying labor and materials under contract; Salt Lake Hardware Co. v. Chainman Min. etc. Co., 137 Fed. 637, mechanic's lien not void because statement filed claimed more than actually due, where it was result of mistake and without fraudulent intent.

Syl. 2 (X, 153). Mechanic's lien—Mine foreman.

Approved in Thompson v. Wise Boy Min. etc. Co., 9 Idaho, 367, 74 Pac. 960, an amalgamator in quartz-mill located on mine and operated by mine owners is entitled to lien on mine for labor.

104 U. S. 185-191, 26 L. 716, THE ANNIE LINDSLEY.

Syl. 1 (X, 154). Admiralty—Conclusiveness of findings.

Approved in Wiser v. Lawler, 7 Ariz. 183, 62 Pac. 700, applying rule in equity.

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104 U. S. 192-196, 26 L. 707, MAHONEY MINING CO. v. ANGLO CALIFORNIA BANK.

Syl. 1 (X, 155). Mining corporation—Power to borrow.

See 111 Am. St. Rep. 317, note.

104 U. S. 197-208, 26 L. 708, KNICKERBOCKER LIFE INSURANCE CO. v. TREFZ.

Syl. 2 (X, 156). Insurance—Answer to specific queries.

Approved in Hanrahan v. Metropolitan Life Ins. Co., 72 N. J. L. 508, 63 Atl. 281, where insurance application asked for name of lost attending physician, date of attendance and complaint, and name of physician not given in answer, there is breach of warranty; Logan v. Assurance Society, 57 W. Va. 394, 50 S. E. 533, insured's answer that he was never sick not breach of warranty where he only had slight ailments, such as colds and stomachache.

104 U. S. 209-213, 26 L. 719, WILLIAMS v. NOTTAWA.

Syl. 1 (X, 156). Federal jurisdiction—Suit by assignee.

Approved in Steigleder v. McQuesten, 198 U. S. 142, 49 L. 987, 25 Sup. Ct. 616, question of federal jurisdiction invoked on ground of diversity of citizenship may be raised by motion to dismiss based on proofs taken by master to whom cause referred; Kreider v. Cole, 149 Fed. 654, where persons interested in corporation desiring to sue in Pennsylvania federal court for receiver caused bonds and stocks of nominal value to be assigned to citizen of New Jersey, merely for purposes of suit, transaction was fraud on court's jurisdiction; Kirven v. Virginia-Carolina Chemical Co., 145 Fed. 291, where objection to federal jurisdiction is taken by answer, issue thereon should not be submitted to jury with other issues to be determined by general verdict; Briggs v. Traders' Co., 145 Fed. 257, question of federal jurisdiction may be raised in any manner; Woodside v. Vasey, 142 Fed. 619, circuit court has no jurisdiction of action, against directors of corporation to enforce claims against corporation where claims assigned merely for purpose of suit and no single claim is within jurisdictional amount; Turnbull v. Ross, 141 Fed. 652, dismissing suit where evidence shows collusive transfer of subject matter of action to give jurisdiction; Pennsylvania Co. v. Bay, 138 Fed. 205, where bill to enjoin ticket scalping alleged value of business sought to be protected was $5,000, and answer alleged amount in controversy was less than $2,000, case not dismissed till defendant had sustained burden of showing jurisdictional amount was lacking.

104 U. S. 228-244, 26 L. 723, CONNER v. LONG.

Syl. 2 (X, 160). Bankruptcy assignee's title—Relation back.

Approved in Northwestern etc. Ins. Co. v. Kidder, 162 Ind. 391, 70 N. E. 492, 66 L. R. A. 89, where creditors of insolvent corporation which insured controlled claimed latter paid premiums with corporation's

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funds, and demanded that insurer stop payment on check given to beneficiary, insurer could not compel parties to interplead.

104 U. S. 245-252, 26 L. 729, WALKER v. POWERS.

Syl. 3 (X, 161). Equity—Multifariousness of bill.

Approved in Horner-Gaylord Co. v. Miller & Bennett, 147 Fed. 297, in suit for appointment of receiver of bankrupt prior to adjudication for purpose of taking possession of property fraudulently conveyed, not multifarious because many transferees joined; South Penn. Oil Co. v. Calf Creek etc. Co., 140 Fed. 516, bill to enjoin prosecution of two actions at law against complainant, which involve same indivisible subject matter, is not multifarious because claims of two plaintiffs in such actions are separate; Inman v. New York etc. Water Co., 131 Fed. 999, bill joining question of ownership in corporate stock with request for relief defendant on such ownership is multifarious.

104 U. S. 252-261, 26 L. 765, THOMPSON v. KNICKERBOCKER LIFE INS. CO.

Syl. 1 (X, 161). Insurance—Unpaid premium note.

Approved in Parker v. Knights Templar etc. Co., 70 Neb. 279, 97 N. W. 285, permanent waiver of conditions in policy as to place of payment of premiums not shown by occasional indulgences shown insured; Hagins v. Aetna Life Ins. Co., 72 S. C. 219, 51 S. E. 684, where accident policy provided for payment of premiums by orders on employer of insured for earnings for particular period, where employee failed to earn amount of premium during period, he was not entitled to notice of nonpayment before policy avoided; Ressler v. Fidelity etc. Life Ins. Co., 110 Tenn. 414, 420, 75 S. W. 735, 737, where premium note stated that if not paid at maturity policy void, failure to pay note at maturity rendered policy void, though policy contained no such provision; Metropolitan Life Ins. Co. v. Bradley, 98 Tex. 232, 82 S. W. 1031, 68 L. R. A. 509, New York statute prohibiting forfeiture of life policies for failure to pay premium unless notice mailed to insured in state does not apply where insured lived in Texas and policy there delivered though premiums and policy payable in New York.

Syl. 2 (X, 162). Insurance—Nonpayment of premiums—Sickness.

Approved in Smith v. Sovereign Camp, W. O. W., 179 Mo. 134, 77 S. W. 866, following rule.

Syl. 3 (X, 162). Insurance—Time of payment of essence.

Approved in Supreme Lodge K. of H. v. Jones, 35 Ind. App. 130, 69 N. E. 721, where member of beneficial society failed to pay February dues and creditor paid such dues after his death, and received receipt therefor, society not estopped to declare forfeiture for nonpayment, it not knowing of death at time of receipt; Graham v. Security Mut. Life Ins. Co., 72 N. J. L. 303, 62 Atl. 683, holding forfeiture for nonpayment of premium waived by company.

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Syl. 4 (X, 162). Insurance—Nonpayment of premium—Notice.

Approved in Pacific Mutual Life Ins. Co. v. Galbraith, 115 Tenn. 477, 91 S. W. 206, where policy provided for forfeiture for nonpayment of premiums and that it was incontestable after two years, and it was forfeited for nonpayment and later reinstated on reliance on insured's fraudulent representations, insurer could take advantage of representations within two years of reinstatement.

Syl. 5 (X, 163). Insurance—Parol agreement waiving terms.

Approved in Connecticut Fire Ins. Co. v. Buchanan, 141 Fed. 889, 891, applying rule where policy insured building while occupied as normal school; Liverpool etc. Ins. Co. v. Richardson Lumber Co., 11 Okl. 624, 626, 69 Pac. 951, where policy provided for clear space of two hundred feet between lumber insured and any mill, knowledge of agent of lack of space uncommunicated to company is not waiver.

Syl. 6 (X, 163). Insurance—Premiums—Usage.

Approved in Taylor v. Provident Sav. Life Assur. Soc., 134 Fed. 934, where five year policy provided for payment of yearly premium in advance on certain day and thirty-day grace allowed for payment, and insured died within thirty days after premium due and premium tendered by his representative, policy not forfeited.

Syl. 10 (X, 164). Insurance—Waiver of Conditions.

Approved in Gish v. Insurance Co. of North America, 16 Okl. 78, 79, 87 Pac. 875, determining whether adjuster waived "iron-safe clause."

104 U. S. 261-270, 26 L. 732, HALE v. FINCH.

Syl. 3 (X, 164). Sales—Conditions and covenants.

Distinguished in Amalgamated Gum Co. v. Casein Co. of America, 146 Fed. 911, construing contract whereby manufacturer of patented article agreed to sell to defendant as sole customer if latter took specified quantities, as not binding defendant to take such quantities; Barker v. Pullman Co., 134 Fed. 71, 67 C. C. A. 196, where contract between insurance company and car company provided that insurance company agreed on expiration of car company's policies to renew same, car company not bound to take insurance though agreement signed by both parties.

104 U. S. 271-279, 26 L. 742, NATIONAL BANK v. JOHNSON.

Syl. 1 (X, 165). Purchase of note by bank—Discount.

Approved in Morris v. Third Nat. Bank, 142 Fed. 31, following rule.

Syl. 3 (X, 165). Usury by national bank.

Approved in Daggs v. Phoenix Nat. Bank, 5 Ariz. 418, 53 Pac. 204, national bank in Arizona may charge any rate of interest which may be agreed on.

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104 U. S. 279-291, 26 L. 735, BELK v. MEAGER.

Syl. 1 (X, 165). Mines—Relocation—Assessment work.

Approved in Providence Gold Min. Co. v. Burke, 6 Ariz. 333, 57 Pac. 644, burden is on second locator to show prior location forfeited by failure to do assessment work; Jordan v. Duke, 6 Ariz. 70, 53 Pac. 201, where locators did no work till December 31st, and succeeding six days, and then abandoned claim without performing all statutory work, parties locating on first of year acquired no rights; Worthen v. Sidway, 72 Ark. 226, 79 S. W. 781, failure to perform annual work is of no avail to defeat claim where work resumed before third person made valid location; Field v. Tanner, 32 Colo. 285, 75 Pac. 919, filing of notice of enlistment and desire to hold claim by volunteers in Spanish war is equivalent to actual performance of assessment work so as to revive claimant's rights forfeited by failure to do assessment work for preceding year.

Syl. 3 (X, 166). Mines—Actual possession of locator—Abandonment.

Approved in Porter v. Tonopah etc. Dev. Co., 133 Fed. 758, following rule; Zerres v. Vanina, 150 Fed. 565, 566, relocator cannot maintain ejectment against original locator or his grantees on ground that first location was void for failure to record claim as provided by statute; Reed v. Munn, 148 Fed. 757, purchaser from locator of mining claim has prior equity over claimant of prior equitable interest; Malone v. Jackson, 137 Fed. 880, 881, 70 C. C. A. 216, where claim located on December 6, 1898, it was not subject to relocation for locator's failure to do work until after December 31, 1899; Zerres v. Vanina, 134 Fed. 614, 618, under Comp. Laws Nev. 1900, § 210, providing for recordation of mining claim within ninety days of posting location notice, failure to record did not forfeit locator's rights; Willitt v. Baker, 133 Fed. 946, 947, where locators were at work on December 31st, and left tools that night intending to return in morning, which they did, one relocating during night acquired no rights; Last Chance Min. Co. v. Bunker Hill etc. Co., 131 Fed. 585, 66 C. C. A. 299, locator of another claim on same vein within fifteen days required by Idaho statute for recordation of location notice, with knowledge of prior claim, and that owner was in possession, acquired no rights in conflict with older claim; Loeser v. Gardiner, 1 Alaska, 648, where one located claim on January 6, 1899, no location could be made prior to December 31, 1900, for failure to do assessment work; Tyee Consol. Min. Co. v. Langstedt, 1 Alaska, 449, mining locator may bring ejectment against rival claimant; Hickey v. Anaconda Copper Min. Co., 33 Mont. 64, 81 Pac. 811, where declaratory statement filed in support of mining claim was void, patent subsequently issued did not by relation give validity to location at date antecedent to application for patent; dissenting opinion in Dwinnell v. Dyer, 145 Cal. 29, 30, 78 Pac. 250,

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majority holding where locators took necessary steps to make valid location under federal law but failed to comply with Stat. 1897, p. 214, and were in possession when statute repealed, location was valid; Adams v. Couch, 1 Okl. 38, 26 Pac. 1016, arguendo.

Distinguished in Dwinnell v. Dyer, 145 Cal. 20, 78 Pac. 253, where locators took steps necessary to make valid location under federal laws, but failed to comply with Stat. 1897, p. 214, and were in possession when statute was repealed, it was valid location; Rebecca Gold Min. Co. v. Bryant, 31 Colo. 123, 126, 102 Am. St. Rep. 17, 71 Pac. 1111, 1112, where strip included in location certificate of C. claim was excluded when patent issued and adjoining locators included it in their application and received final certificate therefor, and later land office excluded it from records without notice subsequent locator acquired no title.

Syl. 4 (X, 167). Mines—Relocation on existing location.

Approved in Sullivan v. Sharp, 33 Colo. 348, 80 Pac. 1054, and Peoria etc. Min. Co. v. Turner, 20 Colo. App. 479, 79 Pac. 917, both following rule; Dufresne v. Northern Light Min. Co., 2 Alaska, 593, 595, 597, 599, where senior valid placer location overlapped by junior location, and overlap abandoned by senior locator, abandoned portion is subject to relocation; Providence Gold Min. Co. v. Burke, 6 Ariz. 333, 57 Pac. 644, recital in location notice that it is relocation of another mining claim is implied admission of validity of former location; Jordan v. Duke, 4 Ariz. 282, 36 Pac. 897, holding erroneous instruction that if mining ground not within valid location or not in actual possession of one entitled thereto, location was valid; Heine v. Roth, 2 Alaska, 424, mining location conflicting with prior homestead entry is void; Thompson v. Burk, 2 Alaska, 254, where defendant located placer claim, but made no discovery, and plaintiff made subsequent relocation, and thereafter contracted with defendant to dig discovery shaft for him, and he discovered gold, discovery inured to defendant's location; dissenting opinion to Bonanza etc. Min. Co. v. Golden Head Min. Co., 29 Utah, 180, 80 Pac. 743, majority holding claim not located at time of subsequent location; Thompson v. Allen, 1 Alaska, 639, arguendo.

Syl. 2 (X, 166). Mining claim salable property.

Approved in Worthen v. Sidway, 72 Ark. 225, 79 S. W. 781, and Copper River Min. Co. v. McClellan, 2 Alaska, 143, both following rule; Clipper Min. Co. v. Eli Min. etc. Co., 194 U. S. 226, 48 L. 950, 24 Sup. Ct. 632, entry on prior valid placer location for purpose of prospecting for unknown lodes initiates no title to lode claims thus located within boundaries of placer claim; O'Connell v. Pinnacle Gold Mines Co., 140 Fed. 855, affirming 131 Fed. 110, and holding possessory right of locator of unpatented mining claim passes to heirs by descent, and his rights may be administered on and sold as other property by administrator; dissenting opinion in Lily Min. Co.

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v. Kellogg, 27 Utah, 123, 74 Pac. 522, majority holding in action to determine right of possession to mining claim arising out of land office proceedings, state statutes regulating actions for recovery of realty are inapplicable; Montague v. Labay, 2 Alaska, 576, 577, following rule; Creede etc. Milling Co. v. Uinta Tunnel etc. Co., 196 U. S. 346, 49 L. 507, 25 Sup. Ct. 266, entry of lode claim followed by patent does not preclude owner of tunnel site located across lode, who claims location prior to discovery in lode, from showing order of steps taken to perfect lode location; Hickey v. Anaconda Copper Min. Co., 33 Mont. 63, 81 Pac. 811, applying rule in determining priority of location where extralateral mining rights involved; Wright v. Lyons, 45 Or. 172, 77 Pac. 82, where lode locators omitted center end posts and did not attach to copy of location notice filed for record, an affidavit of proof of work as required by statute, omissions are fatal; Reiner v. Schroder, 146 Cal. 418, 80 Pac. 519, and dissenting opinion in Sproat v. Durland, 2 Okl. 57, 35 Pac. 889, both arguendo. See 104 Am. St. Rep. 688, note.

Distinguished in Goldberg v. Bruschi, 146 Cal. 713, 81 Pac. 25, where defendant did no work on mining claim after its location, its mere possession cannot prevent relocation.

(X, 165.) Miscellaneous. Cited in Butte City Water Co. v. Baker, 196 U. S. 124, 49 L. 411, 25 Sup. Ct. 211, recognizing validity of state mining laws.

104 U. S. 291-300, 26 L. 745, GILES v. LITTLE.

Syl. 1 (X, 169). Wills—Intent—Surrounding circumstances.

Approved in Anderson v. Messinger, 146 Fed. 938, construing will declaring that if either of two sons died without lineal descendants, survivor should take his estate, and if survivor died without lineal descendants, one-half of decedent's original portion, as well as half of survivorship portion, should go to one of testator's brothers, and other half to his other brothers and sisters.

Syl. 2 (X, 169). Devise with power to sell.

Distinguished in Widows' Home v. Lippardt, 70 Ohio, 289, 71 N. E. 774, will devising estate to widow with power to dispose of as she sees fit and after her death what remains to be distributed in designated manner, gives widow right to convey fee.

Syl. 3 (X, 169). Life tenant's power to dispose.

Approved in Dickey v. Barnstable, 122 Iowa, 579, 98 N. W. 370, where power granted to life tenant to convey fee and invest proceeds for herself for life, remainder to daughter, discretion not interfered with in absence of fraud; Parks v. Robinson, 138 N. C. 273, 50 S. E. 650, devise to wife during her life and at her disposal gives widow right to convey fee.

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104 U. S. 303-310, 26 L. 769, LIBBY v. HOPKINS.

Syl. 1 (X, 171). Bankruptcy—Setoff of credits.

Approved in Western Tie etc. Co. v. Brown, 196 U. S. 510, 49 L. 574, 25 Sup. Ct. 339, sum retained by corporation creditor, with knowledge of debtor's insolvency, within four months of bankruptcy, which was owing bankrupt under agreement whereby corporation in paying employees was to deduct amounts due from employees to bankrupt, cannot be set off by creditor in proving claim against bankrupt; In re Becker, 139 Fed. 367, against claim of landlord for rent under lease to bankrupt, unliquidated claim for damages in favor of bankrupt arising dependently of lease cannot be set off.

Syl. 3 (X, 171). Bankruptcy—Setoffs.

Approved in Smith v. Perry, 197 Mo. 452, 95 S. W. 340, where estate of cestui que trust was insolvent, trustee's estate in action for accounting, in absence of fraud, could set off in equity claims held by trustee individually against cestui que trust.

104 U. S. 310-319, 26 L. 749, PICKERING v. McCULLOUGH.

Syl. 1 (X, 172). Patents—Combination of old devices.

Approved in Van Epps v. United Box Board etc. Co., 143 Fed. 874, Victory patent No. 417,451, for pulp-screening machine not anticipated; American Choc. Mach. Co. v. Helmstetter, 142 Fed. 980, Holmes patent No. 492,205, for chocolate-dipping machine, not infringed by machine of Weeks patent No. 634,633; Louden Mach. Co. v. Janesville etc. Tool Co., 141 Fed. 979, upholding Louden patent No. 444,546, for hay sling; Johnson v. Foos Mfg. Co., 141 Fed. 87, holding void Johnson patents Nos. 654,550 and 506,268, for apparatus for separating cotton-seed and hulls; Dodge Coal Storage Co. v. New York etc. R. R. Co., 139 Fed. 985, 986, 987, holding void Piez & Beaumont patents Nos. 668,960, 688,111, for improvements in storage apparatus; Pennsylvania Globe Gaslight Co. v. Best, 137 Fed. 942, upholding Campbell patent No. 447,757, for improvement in incandescent burners; Voightmann v. Weis & Ridge Cornice Co., 133 Fed. 300, holding void Voightmann patent No. 600,186, for improvement in fire-proof windows; Voightmann v. Perkinson, 133 Fed. 835, holding void Voightmann patent No. 600,180, for fire-proof window; Timolat v. Philadelphia Pneumatic Tool Co., 131 Fed. 261, upholding Moffet patent No. 369,120, for portable drilling machine; Thomson-Houston El. Co. v. Ohio Brass Co., 129 Fed. 379, upholding Van Depoeli patent No. 394,039, for insulated turn buckle.

104 U. S. 319-321, 26 L. 740, SAGE v. WYNCOOP.

Syl. 1 (X, 174). Bankruptcy—Evidence as to preference by insolvent.

Approved in Wright v. Cotten, 140 N. C. 8, 52 S. E. 143, knowledge of son who acted as father's financial agent that bankrupt was insolvent was knowledge of father in receiving preference.

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104 U. S. 322-329, 26 L. 752, COLLINS v. RILEY.

Syl. 1 (X, 175). Special verdict defined.

Approved in Wiser v. Lawler, 7 Ariz. 183, 62 Pac. 700, on equity, appeal findings of court are conclusive.

104 U. S. 333-339, 26 L. 755, EGBERT v. LIPPMANN.

Syl. 1 (X, 176). Patents—Prior use.

Distinguished in Bryce Bros. Co. v. Seneca Glass Co., 140 Fed. 173, holding Schrader patent No. 592,920, for engraving machine for etching glassware.

Syl. 2 (X, 176). Patents—Sufficiency of prior use.

Approved in National Phonograph Co. v. Lambert & Co., 142 Fed. 166, Edison patent No. 713,209, for process of duplicating phonograms is void, having been used by patentee and employees for more than nine years prior to application; American Featherbone Co. v. Warren Featherbone Co., 141 Fed. 658, holding void Warren & Holden patent No. 559,827 for process for manufacturing featherbone; Jenner v. Bowen, 139 Fed. 560, where inventor of bottle-wrapping machine set up one for customer, who paid for it and used it commercially for more than two years prior to patent, there is prior use; Bradley v. Eccles, 138 Fed. 914, 915, holding void Hannan reissue No. 11,260 for improvements in thill-couplings; Eastman v. Mayor etc. of N. Y., 134 Fed. 858, 69 C. C. A. 628, holding void Knibbs patent no. 42,920, for improvement in fire-engine pumps.

Syl. 3 (X, 177). Patents—Experimental uses.

Approved in Victor Talking Mach. Co. v. American Graph. Co., 140 Fed. 864, where inventor of Berliner patent No. 534,543, for improvement in talking machines, used machine and delivered lecture in relation thereto to audience more than two years prior to patentee, there was no prior use.

104 U. S. 340-344, 26 L. 821, WORLEY v. LOKER TOBACCO CO.

Syl. 1 (X, 177). Patents—Public use.

Approved in National Phonograph Co. v. Lambert & Co., 142 Fed. 166, Edison patent No. 713,209, for process of duplicating phonograms, is void, having been used by patentee and employees for more than nine years prior to application; Bradley v. Eccles, 138 Fed. 914, holding void Hannan reissue No. 11,260, for improvements in thill-couplings; Eastman v. Mayor etc. of N. Y., 134 Fed. 858, 69 C. C. A. 628, holding void Knibbs patent No. 42,920, for improvement in fire-engine pumps.

(X, 177.) Miscellaneous. Cited in Drewson v. Hartje etc. Co., 131 Fed. 738, 65 C. C. A. 548, date of letters patent is prima facie date of application.

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104 U. S. 350-356, 26 L. 783, MILLER v. BRIDGEPORT BRASS CO.

Syl. 1 (X, 178). Patent reissue—Same as original.

Approved in Rawson etc. Mfg. Co. v. Hunt Co., 147 Fed. 240, where drawings and description of Norris reissue No. 12,085, for clutch mechanism are identical with those of original, validity of claims of original repeated and separately stated in reissue not affected by invalidity of other claims; Cleveland Foundry Co. v. Detroit Vapor Stove Co., 131 Fed. 751, holding void Jeavons patent No. 475,401, for oil burner.

Distinguished in Victor Talking Mach. Co. v. American Graph. Co., 140 Fed. 865, upholding Berliner patent No. 534,543 for improvements in talking machines.

Syl. 2 (X, 181). Patents—Time for reissue application.

Approved in Milloy Elec. Co. v. Thompson-Houston Elec. Co., 148 Fed. 846, Van Depoele reissue No. 11,872 for traveling contract for electric railways is void because application made more than seven years after issuance of original and more than three years after it had been declared void; Fitch v. Spang, 140 Fed. 294, arguendo.

104 U. S. 356-385, 26 L. 786, JAMES v. CAMPBELL.

Syl. 1 (X, 183). Patents—Use by government.

Approved in dissenting opinion in International Postal Supply Co. v. Bruce, 194 U. S. 607, 608, 48 L. 1137, 1138, 24 Sup. Ct. 820, majority holding inability to make United States party defeats right of patentee for improvement in stamp-canceling machine to enjoin use by postmaster of infringing machines of which United States is lessee.

Syl. 4 (X, 184). Patents—Reissue expanding claim.

Approved in National Elec. Sig. Co. v. De Forest Wireless Tel. Co., 140 Fed. 453, Fessenden reissue No. 12,115, for receiver for electro magnetic waves, not covered by prior patent No. 706,744 to same inventor; Williams Calk Co. v. Neverslip Mfg. Co., 136 Fed. 212, holding void Williams patent No. 666,583, for horseshoe calk.

Syl. 6 (X, 186). Patents—Omissions from claim.

Approved in Davis etc. Drill Co. v. Plunger Elev. Co., 135 Fed. 120, Davis patents Nos. 694,534 and 694,535 for rock-boring machine and apparatus, anticipated by prior patent No. 555,640, to same inventor; Cleveland Foundry Co. v. Detroit Vapor Stove Co., 131 Fed. 744, holding void Jeavous patent No. 475,401, claim 5, for oil-burner.

Distinguished in Victor Talking Mach. Co. v. American Graph. Co., 140 Fed. 865, upholding Berliner patent No. 534,543, for improvements in talking-machines.

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104 U. S. 386-407, 26 L. 757, DAVIS v. GAINES.

Syl. 2 (X, 187). Probate sale is in rem.

Approved in Clark v. Rossier, 10 Idaho, 359, 78 Pac. 360, probate court sale is not collaterally attackable.

104 U. S. 407-410, 26 L. 823, HYDE v. RUBLE.

Syl. 1 (X, 188). Removal—Separable controversy.

Approved in O'Conor v. Texas, 202 U. S. 507, 50 L. 1126, 26 Sup. Ct. 726, alien nonresident cannot remove state action; Manufacturers' Com. Co. v. Brown Alaska Co., 148 Fed. 310, where maker and indorsers of note are sued jointly, action may be removed by any defendant who could have removed if sued alone, irrespective of citizenship of codefendants; Cella v. Brown, 136 Fed. 445, where citizen of Missouri sued A to avoid railroad reorganization contract, and for specific performance of A's contract to convey pledged securities of railroads, and bill alleged codefendant through whom transaction was to be carried out insisted on invalid conditions, complainant could remove, though codefendant was citizen of same state; Boatmen's Bank v. Fritzlen, 135 Fed. 663, 68 C. C. A. 288, suit to avoid prior mortgage and to foreclose junior mortgage involves separable controversy; Lathrop etc. Co. v. Pittsburg etc. R. Co., 135 Fed. 620, where in action against railroad and construction company for services citizenship of latter only was diverse, and it acted as agent for railroad, action not removable; Miller v. Clifford, 133 Fed. 884, 67 C. C. A. 52, equity suit on behalf of all creditors of Colorado bank to enforce stockholder's liability under Colorado statute cannot be removed by single stockholder; Groel v. United Elec. Co., 132 Fed. 254, in suit by stockholder in own name on right of action in corporation, latter is indispensable party, and for purpose of federal jurisdiction is aligned with defendant when its officers are opposed to object sought by plaintiff and with plaintiff when opposition not shown.

104 U. S. 410-418, 26 L. 797, BRONSON v. SCHULTEN.

Syl. 1 (X, 191). Control of judgment during term.

Approved in Gagnon v. United States, 193 U. S. 456, 48 L. 747, 24 Sup. Ct. 510, judgment of naturalization never recorded or record of which is lost cannot be entered by law court nunc pro tunc thirty-three years after rendition; O'Connor v. O'Connor, 142 Fed. 450, federal court cannot vacate judgment at law rendered at previous term; King v. Davis, 137 Fed. 227, federal law court cannot vacate judgment of former term founded on false but apparently valid return of service of process; King v. Davis, 137 Fed. 218, default judgment in ejectment recovered in federal law court at former term cannot be vacated for fraud in procurement; United States v. Four Lorgnette Holders, 132 Fed. 565, judgment of forfeiture against merchandise for attempt to defraud customs laws cannot be vacated after term to permit importer to defend on ground of irregularities in

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procedure; Fisher v. Fisher, 114 Mo. App. 633, 90 S. W. 415, where defendant was guilty of no negligence in making defense, but court misled into entering judgment against her by default, court could after term set aside judgment on motion; Livesley v. Johnston, 47 Or. 196, 82 Pac. 855, supreme court may, at any time during term at which appeal dismissed as to one of parties under stipulation entered into by mistake, recall mandate after it has been transmitted to trial court; Banks v. Wilson, 1 Alaska, 244, refusing to vacate nonsuit; Matter of Guardianship of Zeckendorf, 7 Ariz. 330, 64 Pac. 493, upholding refusal to vacate judgment on motion made after term at which it was entered; Goldreyer v. Cronan, 76 Conn. 116, 55 Atl. 595, where after trial judge filed memorandum reciting judgment for plaintiff for $300, and after term formal judgment entered for plaintiff for $400, judge entering finding that he had accidentally omitted to add the interest, court could not correct mistake after term; dissenting opinion in State v. Marsh, 134 N. C. 201, 47 S. E. 12, 67 L. R. A. 179, majority holding where conviction of rape reversed because indictment in record failed to show want of consent, but such allegation omitted from printed record by misprision of clerk, supreme court after term could grant certiorari to correct record.

Syl. 2 (X, 193). Writ of error coram nobis—Judgment.

Approved in Ex parte Peeke, 144 Fed. 1020, where one found guilty on five counts of indictment under Rev. St., § 5440, and was given single sentence of five years, and statute prescribed maximum of two years, court may correct judgment.

Syl. 3 (X, 193). Federal courts—State practice.

Approved in King v. Davis, 137 Fed. 215, finding of fact by trial court that defendant in ejectment had no notice of application to amend declaration does not authorize vacation of final judgment.

104 U. S. 419, 26 L. 824, CUMMINGS v. JONES.

Syl. 1 (X, 194). Error to state court—Limitations.

Approved in Cresap v. Cresap, 54 W. Va. 584, 46 S. E. 584, date of decree as shown by record marks time from which state of limitations governing appeal from it commences to run.

104 U. S. 420-427, 26 L. 800, QUINBY v. CONLAN.

Syl. 5 (X, 195). Conclusiveness of land decisions.

Approved in Hartwell v. Havighorst, 196 U. S. 635, 49 L. 629, 25 Sup. Ct. 793, Peyton v. Desmond, 129 Fed. 9, 63 C. C. A. 651, Adams v. Couch, 16 Okl. 40, 26 Pac. 1016, and Paine v. Foster, 9 Okl. 228, 254, 263, 264, 53 Pac. 113, 122, 60 Pac. 25, all following rule; Miller v. Margerie, 149 Fed. 697, applying rule in suit to set aside deed by Alaska townsite trustee for fraud; Cagle v. Dunham, 14 Okl. 615, 78 Pac. 562, refusing to set aside land department decision rendered on

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full hearing, on allegation that perjury committed at hearing before department; Estes v. Timmons, 12 Okl. 544, 73 Pac. 305, sustaining demurrer to petition based on alleged fraud of defendant in proofs submitted by him to land office receiver; Parker v. Lynch, 7 Okl. 650, 661, 56 Pac. 1088, 1092, fact that one offered contest against homestead entry which was rejected by Land Department gives no right of action to sue to declare patentee, who was entryman at time of contest, trustee for use of plaintiff; Thornton v. Peery, 7 Okl. 447, 54 Pac. 651, refusing to consider allegation that testimony given in contest before Land Department does not prove abandonment of claim; Cummings v. McDermid, 4 Okl. 280, 44 Pac. 278, holding insufficient allegations of fraud in petition to set aside award of townsite trustees; King v. Thompson, 3 Okl. 647, 39 Pac. 467, holding insufficient petition seeking to charge holder of legal title as trustee for lot awarded by townsite board which fails to show fraud practiced on board by prevailing party and fails to set out findings on which board made award.

104 U. S. 441, 442, 26 L. 765, VIGEL v. HOPP.

Syl. 1 (X, 199). Equity—Answer responsive to bill.

Approved in Ford v. Taylor, 137 Fed. 151, applying rule to bill for appointment of receiver.

104 U. S. 444-449, 26 L. 825, WELLS v. NICKLES.

Syl. 1 (X, 200). Land Department special agents.

Approved in United States v. Schlierholz, 137 Fed. 619, special agent of Land Department appointed under Appropriation Act June 4, 1897, is not officer of United States within Rev. St., § 5481, punishing extortion.

104 U. S. 450-462, 26 L. 827, HAWES v. OAKLAND.

Syl. 1 (X, 200). Stockholder's suit on behalf of corporation.

Approved in Dawson v. Columbia Avenue etc. Trust Co., 197 U. S. 181, 49 L. 716, 25 Sup. Ct. 420, denying federal jurisdiction over suit against city by mortgagee of water company to enforce city's contract with company where there is no diversity of citizenship between city and company, and interests of latter and mortgagee are not antagonistic; Doctor v. Harrington, 196 U. S. 588, 49 L. 610, 25 Sup. Ct. 355, fact that ultimate interest of corporation defendant may be same as that of complaining stockholders does not require that corporation be aligned with complainant for purpose of federal jurisdiction where bill alleges corporation controlled by persons antagonistic to complainants; Macon etc. R. Co. v. Shailer, 141 Fed. 590, 591, minority stockholder cannot sue to set aside executed sale of assets of corporation by pledgee under pledge where directors not alleged to disapprove sale or that they would not ratify it; Kemmerer v. Haggerty, 139 Fed. 696, where corporation, citizen of same

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state as defendants, sued employees in state court to enjoin strike, and pending suit nonresident stockholders made demand on officers to sue in federal court, and on refusal, themselves sued therein, federal court had no jurisdiction; Columbia Nat. Sand Dredging Co. v. Washed etc. Dredging Co., 136 Fed. 712, where stockholder's bill shows that directors of corporation own majority of stock and that they are mismanaging corporation and diverting funds and income to themselves, demand on corporation not necessary to suit; Bowling Green Trust Co. v. Virginia etc. R. Co., 132 Fed. 923, denying right of bondholders to intervene in suit by trustee to foreclose railroad mortgage; Maeder v. Buffalo Bill's Wild West Co., 132 Fed. 284, stockholder cannot sue corporation and directors to compel declaration of dividend where no application made to directors or not shown that application would not be considered; Ide v. Bascomb, 18 Colo. App. 424, 72 Pac. 65, where persons pretending to act as directors of corporation authorized note to one of their number, stockholders cannot maintain suit to cancel judgment on note where directors not asked to bring suit; Smith v. Bulkley, 18 Colo. App. 231, 70 Pac. 959, fact that corporation enjoined from suing to prevent sale under its trust deed does not authorize stockholder to enjoin sale on ground that mortgage ultra vires, where no fraud or refusal of directors to dissolve injunction alleged; Bond v. Gray Imp. Co., 102 Md. 433, 62 Atl. 828, minority stockholders in corporation whose property sold on foreclosure cannot intervene to except to ratification of sale where other stockholders satisfied; Von Arnim v. American Tube Works, 188 Mass. 517, 74 N. E. 680, upholding suit by minority stockholder against officers of corporation for misappropriation of its funds; Home Fire Ins. Co. v. Barber, 67 Neb. 656, 659, 108 Am. St. Rep. 726, 93 N. W. 1028, 1029, subsequent stockholders cannot complain of prior mismanagement of corporation where they have obtained shares from wrongdoers; Rankin v. Southwestern Brewery etc. Co., 12 N. M. 59, 73 Pac. 614, stockholder acquiring stock by purchase cannot complain of illegal salaries paid directors prior to his becoming stockholder; Peterson v. Christianson, 18 S. D. 474, 101 N. W. 42, in action by members of church corporation composed of two nationalities to restrain other members from preventing plaintiffs from occupying church half of time, as provided by by-laws, corporation is not necessary party; McCampbell v. Fountain Head R. R. Co., 111 Tenn. 69, 102 Am. St. Rep. 731, 77 S. W. 1073, where owners of part of railroad's stock, who were its directors, authorized corporation to subscribe for stock in land company and to indorse notes of land company, and they became insolvent and stock taken by creditors, creditors could sue in equity without applying to railroad; Hearst v. Putnam Min. Co., 28 Utah, 196, 107 Am. St. Rep. 698, 77 Pac. 757, 66 L. R. A. 784, stockholders cannot sue in own right to cancel conveyance by corporation on ground of fraud giving rise to trust in their favor; Virginia etc. Co. v. Fisher, 104 Va. 126, 51 S. E. 200, upholding suit

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by stockholder for appointment of receiver without demand on corporation for action to redress wrong committed by controlling member. See notes, 97 Am. St. Rep. 31, 38, 40; 103 Am. St. Rep. 560.

Limited in Groel v. United Elec. Co., 132 Fed. 255, 256, 257, 260, 261, 262, in equity suit by stockholder in own name on right of action in corporation, latter is indispensable party, and will be aligned with defendant when its officers are opposed to plaintiff, and with plaintiff where not opposed to him.

104 U. S. 462-464, 26 L. 832, ROSENBLAT v. JOHNSTON.

Syl. 1 (X, 205). State tax—Insolvent national bank.

Distinguished in Gerard v. Duncan, 84 Miss. 733, 735, 36 So. 1035, 66 L. R. A. 461, notes of insolvent state bank passing to assignee by general assignment made prior to February 1st, are taxable in hands of assignee under Code 1892, § 3755.

Syl. 2 (X, 206). Appointment of receiver for national bank.

Approved in Muir v. Citizens' Nat. Bank, 39 Wash. 58, 80 Pac. 1007, where national bank went into voluntary liquidation, it was not required to register subsequent transfer of its stock and to issue new stock to transferee.

104 U. S. 464, 465, 26 L. 833, MURPHY v. UNITED STATES.

Syl. 1 (X, 206). Government claim—Acceptance of less.

Approved in Hunt v. Franklin County Commrs., 100 Me. 446, 62 Atl. 214, where county commissioners allowed smaller gross sum in full for itemized bill against county, and claimant draws such sum from treasury, claim for remainder is barred; Weston v. Falk, 66 Neb. 201, 92 N. W. 206, where claim against state is allowed in part by auditor, if claimant accepts warrant drawn for part allowed he thereby waives right of appeal.

104 U. S. 469-479, 26 L. 775, LOUISVILLE v. PORTSMOUTH SAVINGS BANK.

Syl. 2 (X, 207). Time—Fractions of day.

Approved in Maxwell v. Jacksonville Loan etc. Co., 45 Fla. 454, 34 So. 264, under rule requiring testimony to be taken within three months after cause at issue, it is immaterial at what time of day replication is filed; Quinn v. Cambridge, 187 Mass. 509, 73 N. E. 661, 69 L. R. A. 311, determining when time within which assessment for betterments commences to run under Pub. St. 1882, c. 51, § 1.

Distinguished in Gibson v. Anderson, 131 Fed. 42, 65 C. C. A. 277, where published records of joint congressional resolutions, duly authenticated, showed resolutions approved May 27, 1902, it cannot be impeached by proof showing they were not in fact approved until later day.

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104 U. S. 482-484, 26 L. 833, HUNTINGTON v. PALMER.

Syl. 1 (X, 208). Suit by stockholder for corporation.

Approved in Kemmerer v. Haggerty, 139 Fed. 696, where corporation, citizen of same state as defendants, sued in state court to enjoin strike of employees, and nonresident stockholders demand of officers of corporation that they sue in federal court, and on refusal themselves sued in federal court for such relief, latter court had no jurisdiction. See 103 Am. St. Rep. 560, note.

Limited in Groel v. United Electric Co., 132 Fed. 256, in suit by stockholder on right of action in corporation, latter is indispensable party, and for purpose of federal jurisdiction is aligned with defendants when officers are opposed to complainant's object and with latter when no opposition shown.

104 U. S. 493-497, 26 L. 810, BANK OF COMMERCE v. TENNESSEE.

Syl. 2 (X, 209). Tax exemption.

Approved in Powers v. Detroit etc. Ry. Co., 201 U. S. 560, 50 L. 866, 26 Sup. Ct. 556, contract betwen state and railroad exempting property from taxation other than tax prescribed, in statute created by provision of statute prescribing annual tax of percentage of capital stock of company in lieu of other taxes.

104 U. S. 498-500, 26 L. 633, VICTOR v. ARTHUR.

Syl. 1 (X, 210). Construction of Revised Statutes.

Approved in United States v. Raisch, 144 Fed. 490, Rev. St., § 5424, prohibits felonious making of certificate of naturalization by one other than person applying for citizenship or his witness; United States v. York, 131 Fed. 329, construing Rev. St., § 5424, relating to false personation in naturalization proceedings.

104 U. S. 505-512, 26 L. 866, STEWART v. LANSING.

Syl. 2 (X, 211). Negotiable paper—Indorsement—Fraud.

Approved in Pere Marquette R. Co. v. Bradford, 149 Fed. 497, where railroad sued to rescind contract for purchase of stock in another company and to cancel bonds issued in payment thereof, where contract made collusively with officers, and answer denied fraud and set up matters in avoidance, preliminary injunction granted restraining transfer of bonds; Gibbs v. Farmers' etc. Bank, 123 Iowa, 742, 99 N. W. 706, determining burden of proof in action for amounts overpaid on note where indorsements show overpayments; Toledo etc. R. R. Co. v. Star etc. Mills Co., 146 Fed. 959, arguendo.

Syl. 5 (X, 213). Direction of verdict.

Approved in Klunk v. Hocking Valley Ry. Co., 74 Ohio St. 134, 77 N. E. 754, determining sufficiency of rebuttal of evidence of negligence in action for personal injuries to locomotive fireman caused by defects in water-gauge glass.

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104 U. S. 515-519, 26 L. 814, EX PARTE GORDON.

Syl. 4 (X, 214). Prohibition to admiralty court.

See 111 Am. St. Rep. 934, note.

104 U. S. 519, 520, 26 L. 815, EX PARTE DETROIT RIVER FERRY CO.

Syl. 1 (X, 214). Prohibition does not correct errors.

Approved in dissenting opinion in State v. Godfrey, 54 W. Va. 77, 46 S. E. 194, majority prohibiting mayor from trying petitioner for violation of void gambling ordinance. See 111 Am. St. Rep. 965, note.

104 U. S. 521-530, 26 L. 816, GOTTFRIED v. MILLER.

Syl. 3 (X, 216). Agent executing contract for corporation.

Approved in Kessel v. Austin Min. Co., 144 Fed. 861, contract purporting in body to be obligation of corporation and signed by A, manager, is contract of corporation.

104 U. S. 553-554, 26 L. 840, GRIGGS v. HOUSTON.

Syl. 1 (X, 217). Direction of verdict.

Approved in Parks v. Southern Ry. Co., 143 Fed. 277, upholding direction of verdict for defendant and refusing to permit plaintiff to take nonsuit in action for death of flagman run over by train; International Text Book Co. v. Hearth, 136 Fed. 133, 69 C. C. A. 127, corporation not liable for slanderous words of agent uttered after agent left plaintiff's presence and gone to another locality where he was not engaged in performance of duties under contract of employment; Gunn v. Union R. R. Co., 27 R. I. 327, 62 Atl. 121, upholding Gen. Laws 1896, c. 251, § 11, authorizing direction of judgment without further trial by jury; Woolf v. Washington etc. Nav. Co., 37 Wash. 503, 79 Pac. 999, refusing relief to one injured while driving across railroad crossing where he whipped horses across track instead of stopping.

(X, 217.) Miscellaneous. Cited in Chaddick v. Lindsay, 5 Okl. 627, 49 Pac. 944, refusing relief to brakeman for injuries caused by negligence of fellow-servant in leaving trunk along track.

104 U. S. 579-591, 26 L. 856, COUNTY OF CLAY v. SOCIETY FOR SAVINGS.

Syl. 1 (X, 221). Recitals in municipal bonds.

Approved in Northwestern Sav. Bank v. Centreville Station, etc., 143 Fed. 84, where town bonds recited issuance under statute authorizing borrow for highways, and further recited supervisors and town clerk acting under direction of town highway commissioner pursuant to popular vote, bona fide purchaser established prima facie liability of town.

104 U. S. 592-595, 26 L. 845, BONAPARTE v. APPEAL TAX COURT.

Syl. 1 (X, 222). Tax on debt of other state.

Approved in Union Refrigerator Transit Co. v. Kentucky, 199 U. S. 205, 50 L. 154, 26 Sup. Ct. 36, due process of law denied Kentucky rail-

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road by tax assessed under authority of Kentucky statute on rolling stock permanently located in other states and employed there in its business; Commonwealth v. Williams, 102 Va. 789, 47 S. E. 871, on death of decedent, legal title to debts due him passes to executor and should be taxed at domicile of executor.

104 U. S. 604-618, 26 L. 861, EX PARTE ROWLAND.

Syl. 1 (X, 223). Contempt of void orders.

Approved in United States v. Atchinson etc. Ry. Co., 142 Fed. 182, holding judgment of contempt for violation of injunction by circuit court restraining railroad from granting rebates is void; Cuyler v. Atlantic etc. R. Co., 131 Fed. 99, where federal court punished newspaper publisher for contempt in publishing criticism of official conduct and integrity of court, judgment was void and publisher released on habeas corpus; Jamison v. Wimbish, 130 Fed. 361, granting habeas corpus where municipal judge imposed infamous punishment for violation of petty municipal offense.

104 U. S. 621-624, 26 L. 869, UNITED STATES v. McBRATNEY.

Syl. 2 (X, 26). Admission of state—Indian reservations.

Approved in In re Terrill, 144 Fed. 618, under Oklahoma territorial organic act, Oklahoma courts had jurisdiction of territorial offense committed on land reserved for governmental use by proclamation of March 3, 1889.

Syl. 3 (X, 226). Jurisdiction—Offenses on Indian reservation.

Approved in State v. Tully, 31 Mont. 377, 78 Pac. 764, holding state court has no jurisdiction over prosecution for murder committed on part of Missoula Military Reservation not ceded to state; Goodson v. United States, 7 Okl. 123, 125, 127, 54 Pac. 425, 426, upholding jurisdiction of district court exercising federal over jurisdiction, prosecution, for adultery committed on Indian reservation.

Distinguished in Brown v. United States, 146 Fed. 977, larceny committed on Indian reservation in Oklahoma territory by one not Indian is crime against United States, cognizable by the territorial district courts exercising jurisdiction vested in federal courts.

104 U. S. 625-631, 26 L. 870, MOORES v. CITIZENS' NATIONAL BANK.

Syl. 2 (X, 227). Reversal—Erroneous sustaining of demurrer.

Approved in Armour v. Russell, 144 Fed. 616, reversing personal injury judgment where erroneous instruction as to safe machinery given, though part of charge correct; Seattle Elec. Co. v. Hartless, 144 Fed. 381, in action by deceased's wife and daughter for damages for wrongful death of husband and father, evidence as to physical condition of plaintiffs is inadmissible; National Biscuit Co. v. Nolan, 138 Fed. 9, 70 C. C. A. 436, it is reversible error to permit plaintiff in personal injury case to testify that she depended upon herself for support; Union Pac. R. Co. v.

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Field, 137 Fed. 18, 69 C. C. A. 536, reversing for erroneous remarks of counsel in argument.

104 U. S. 631-635, 26 L. 873, HOPT v. PEOPLE.

Syl. 1 (X, 227). Murder—Evidence of intoxication.

Approved in State v. Williams, 122 Iowa, 123, 97 N. W. 995, determining propriety of instruction on effect of intoxication in prosecution for murder in first degree.

Syl. 2 (X, 228). Instructions in writing.

Approved in dissenting opinion in Boggs v. United States, 10 Okl. 448, 11 Okl. 145, 65 Pac. 929, majority holding all statements by court to jury are not instructions with statute requiring instructions to be in writing.

Distinguished in State v. Armstrong, 43 Or. 220, 73 Pac. 1027, in reading of additional instruction in murder case from law report not reversible error where substance of instruction contained in written charge.

(X, 227.) Miscellaneous. Cited in dissenting opinion in Kepner v. United States, 195 U. S. 135, 49 L. 126, 24 Sup. Ct. 797, majority holding government cannot appeal from judgment of acquittal in Philippine court of first instance.

104 U. S. 636-657, 26 L. 875, ST. LOUIS SMELTING ETC. CO. v. KEMP.

Syl. 1 (X, 229). Collateral attack on land patent.

Approved in Demars v. Hickey, 13 Wyo. 378, 80 Pac. 522, following rule; Brown v. Gurney, 201 U. S. 193, 50 L. 722, 26 Sup. Ct. 509, rulings of Land Department as to tract covered by lode mining claim are not collaterally atackable where final entry made; Reeve v. North Carolina Land etc. Co., 141 Fed. 825, determining invalidity of grant of state lands; Teegarden v. Le Marchel, 129 Fed. 488, in ejectment in federal court defendant cannot set up equitable title to defeat legal title by impeaching legal title; Peyton v. Desmond, 129 Fed. 8, 9, 63 C. C. A. 651, homestead patentee may recover value of timber wrongfully cut and removed from land after initiation of claim and before issuance of patent; Gurney v. Brown, 32 Colo. 480, 77 Pac. 359, Land Department judgment determining whether applicant for lode patent is entitled to acquire fee is not collaterally attackable; Florida Town Imp. Co. v. Bigalsky, 44 Fla. 777, 33 So. 451, public lands on Amelia Island reserved for military purposes were beyond Land Department's jurisdiction; Gebo v. Clark Fork C. Min. Co., 30 Mont. 92, 75 Pac. 860, holding complainant to hold patentee as trustee because defendant filed in land office forged relinquishment of plaintiff's rights in land, insufficient where no showing made that plaintiff did not fail to do work on land or did not fail to make reasonable proof and payment; Bockfinger v. Foster, 10 Okl. 502, 62 Pac. 803, townsite trustees cannot be adjudged by equity to be trustees for claimants adverse to trust created by act of Congress

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under which patent issued; Oklahoma City v. Hill Bros., 6 Okl. 125, 50 Pac. 245, where townsite trustees made deed while appeal pending from their decision to Secretary of Interior, and prior to order of Interior Department setting aside lots for public use as site for public buildings, deed void; Eastern Oregon Land Co. v. Andrews, 45 Or. 210, 77 Pac. 119, were on issue as to exterior limits of road aid grant plaintiff introduced diagram from land office and defendant introduced plat from office of state's Secretary of State, showing location of line of road, but such plat not required by law to be filed with Secretary of State, diagram controlled; Board of Education v. Mansfield, 17 S. Dak. 82, 106 Am. St. Rep. 771, 95 N. W. 289, townsite patent issued by land officials is not collaterally attackable by mining locators subsequent to patent, on theory that land was mineral; Welsh v. Callvert, 34 Wash. 254, 75 Pac. 872, where state conveyed lands as second-class tide lands, subsequent applicant to purchase portion thereof as oyster lands cannot claim did not include lands applied for; Laramie Nat. Bank v. Steinhoff, 11 Wyo. 308, 71 Pac. 994, in action by possessor under certificate of purchase where no patent issued, court cannot determine title: dissenting opinion in United States v. Ju Toy, 198 U. S. 278, 49 L. 1050, 25 Sup. Ct. 644, majority holding decision of Department of Commerce affirming denial of emmigration officials of right of Chinese to land is conclusive on habeas corpus, where entry claimed on ground of citizenship; dissenting opinion in Lily Min. Co. v. Kellogg, 27 Utah, 121, 74 Pac. 21, majority holding where no claim adverse to mining claim sought to be patented is filed in time limited by Rev. St., § 2325, conclusively presumed that applicant entitled to patent.

Syl. 3 (X, 233). Conclusiveness of land patent.

Approved in Galbraith v. Shasta Iron Co., 143 Cal. 98, 76 Pac. 903, following rule.

Syl. 4 (X, 233). Mistake of land officers—Equitable relief.

Approved in Parker v. Lynch, 7 Okl. 650, 662, 56 Pac. 1088, 1092, fact that one offered contest against homestead entry which was rejected by Land Department gives no right of action to sue to declare patentee, who was entryman at time of contest, trustee for use of plaintiff; Adams v. Couch, 1 Okl. 34, 26 Pac. 1015, refusing to give relief where contest between adverse claimants is pending before Land Department; dissenting opinion in Paine v. Foster, 9 Okl. 275, 60 Pac. 29, majority following rule.

Syl. 6 (X, 233). (Salability of interest in mining claim.

Approved in Price v. McIntosh, 1 Alaska, 293, 294, miner's rule fixing size of placer claims at 1320 feet long by 660 feet wide is void as limiting claim to less than 20 acres.

Syl. 7 (X, 233). Contiguous mines—Joint application.

Approved in Lockard v. Asher Lumber Co., 131 Fed. 691, 695, 65 C. C. A. 517, under Rev. St. Ky., c. 102, § 3, relating to purchase of vacant lands one may survey several 200 acre tracts and obtain patent therefor.

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Syl. 8 (X, 235). Mines—Assessment work.

Distinguished in Hain v. Mattes, 34 Colo. 351, 355, 83 Pac. 129, 130, under Rev. St. U. S., § 2324, as amended February 11, 1875, work done in tunnel may be applied as assessment work on mining location though person doing work does not own continuous strip of territory from portal of tunnel to boundary of location.

(X, 229.) Miscellaneous. Cited in Creede etc. Milling Co. v. Uinta Tunnel etc. Co., 196 U. S. 347, 49 L. 507, 25 Sup. Ct. 266, defining "location" and "mining claim"; Nome-Sinook Co. v. Simpson, 1 Alaska, 583.

104 U. S. 668-680, 26 L. 886, KOSHKONONG v. BURTON.

Syl. 2 (X, 235). Limitations—Existing causes.

Approved in Soper v. Lawrence Bros. Co., 201 U. S. 370, 50 L. 792, 26 Sup. Ct. 473, twenty years' adverse possession of wild land before passage of Me. Pub. Laws, 1895, c. 162, bars suit by former owner for possession if adverse possession did not continue for five years following passage of act; Lamb v. Powder River Livestock Co., 132 Fed. 439, 65 C. C. A. 570, 67 L. R. A. 558, holding void Colo. Sess. Laws, 1895, p. 239, as amended by Sess. Laws, 1899, p. 248, prescribing limitation on actions on judgments. See 111 Am. St. Rep. 455, note.

Syl. 4 (X, 236). Retrospective statutory construction.

Approved in Hall v. Chicago etc. Ry. Co., 149 Fed. 567, employers' liability act of 1906, did not apply to causes of action existing at time of its adoption.

104 U. S. 680-687, 26 L. 891, CHICAGO ETC. RY. CO. v. UNITED STATES.

Syl. 1 (X, 236). Postmaster general—Mail contract compensation.

Approved in Slavens v. United States, 196 U. S. 236, 49 L. 461, 25 Sup. Ct. 229, postmaster general may cancel mail contract, service under which has materially decreased by using street-cars to carry mail.

104 U. S. 689-693, 26 L. 894, MASON v. SARGENT.

Syl. 1 (X, 237). Taxation of legacies—Accrual.

Approved in Eidman v. Tilghman, 136 Fed. 143, 69 C. C. A. 139, affirming Tilghman v. Eidman, 131 Fed. 652, and holding legacies left by testator who died prior to July 1, 1902, at which time act repealing War Revenue Act, 1898, §§ 29, 30, took effect, are not taxable thereunder; Shanley v. Herold, 141 Fed. 426, 427, where testator left residuary estate in trust until death or remarriage of widow, then to be divided among sons, and until such time income to be divided between widow and sons, reversionary interest of sons not subject to War Revenue Act 1896, §§ 29, 30, as amended in 1901.

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104 U. S. 694-707, 26 L. 896, MERRITT v. WELSH.

Syl. 1 (IX, 237). Customs duties—Department regulations.

Distinguished in Stratton v. Oceanic Steamship Co., 140 Fed. 834, treasury regulation requiring master or owner of vessel bringing in alien in transit to foreign country to deposit head tax provided by U. S. Comp. St. Supp. 1905, p. 274, is valid; Borden v. United States, 132 Fed. 206, requirement in treasury department regulations of proof of registry of grandsires and grand dams of animals imported for breeding purposes does not contravene Comp. St. 1901, p. 1679.

Syl. 4 (X, 237). Duty on sugar.

Distinguished in Stone etc. Co. v. United States, 147 Fed. 605, 607, determining rate of duty where two kinds of wools changed in condition by mixing in same bale to make mixture subject to lower duty provided for poorer kind.

104 U. S. 728-734, 26 L. 908, UNITED STATES v. SAVINGS BANK.

Syl. 2, (X, 238). Revenue appeal—Presentation to commissioner.

Approved in Christie-Street Com. Co. v. United States, 136 Fed. 329, 330, 69 C. C. A. 464, affirming 129 Fed. 508, holding action against United States on claim to recover back internal revenue taxes illegally collected which has been presented to, but not approved, by internal revenue commissioner, is barred two years after cause of action accrues:

104 U. S. 737-757, 26 L. 910, HEALD v. RICE.

Syl. 1 (X, 239). Patents—Identity of patent and reissue.

Approved in Connors v. Ormsby, 148 Fed. 14, holding void Ormsby reissue No. 11,639, for transom lifter; Cramer v. Singer Mfg. Co., 147 Fed. 920, Cramer patent No. 271,426, for sewing-machine treadle, is not infringed by device of Diehl patent No. 306,469.

Syl. 3 (X, 239). Patent for combination.

Distinguished in Pennsylvania Globe Gaslight Co. v. Best, 137 Fed. 942, upholding Campbell patent No. 447,757, for method of employing hydrocarbon fluids for illuminating purposes.

104 U. S. 757-766, 26 L. 917, BRITTON v. NICCOLLS.

(X, 240.) Miscellaneous. Cited in Opinion of the Justices, 73 N. H. 624, 62 Atl. 971, woman cannot be notary.

104 U. S. 775-783, 26 L. 924, WARNOCK v. DAVIS.

Syl. 1 (X, 241). Insurable interest of assignee of policy.

Approved in Gould v. New York Life Ins. Co., 132 Fed. 931, where bankrupt held life policy payable to administrators which has no surrender value, and surrendered it to trustee, who failed to pay premium, and bankrupt committed suicide, administrator and not trustee entitled to proceeds; Metropolitan etc. Ins. Co. v. Elison, 72 Kan. 204, 83 Pac. 412, 3 L. R. A. (N. S.) 934, holding void agreement assigning half of proceeds of life policy to one having no insurable interest on considera-

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tion that assignee pay premiums; Griffin v. Equitable Assur. Soc., 119 Ky. 859, 84 S. W. 1165, one not creditor of insured who procures policy on false representation that he is such creditor is not entitled to proceeds; Ryan v. Metropolitan etc. Ins. Co., 117 Mo. App. 690, 93 S. W. 348, cousins have no insurable interest in each other's lives; Hinton v. Mutual Reserve etc. Ins. Co., 135 N. C. 323, 102 Am. St. Rep. 545, 47 S. E. 477, 65 L. R. A. 161, where life policy payable to estate of insured was secured under agreement between insured and person having no insurable interest that latter would pay premiums and take proceeds, and policy assigned to him, he could not sue as administrator to secure proceeds under agreement.

Distinguished in Mechanics' Nat. Bank v. Commrs., 72 N. H. 19, 20, 21, 101 Am. St. Rep. 650, 55 Atl. 195, policy taken by insured on own life is assignable to one who had loaned money to corporations of which insured was manager to secure such debt.

Syl. 2 (X, 242). Assignment of policy to creditor.

Approved in Clark v. Equitable Life Assur. Soc., 133 Fed. 818, where insurer had knowledge that pledgee of policy, though having received amount thereon exceeding debt, declared intention to collect balance due on policy, and insurer agreed to hold balance until legally authorized to dispose of it, insured could sue company therefor; Gordon v. Ware Nat. Bank, 132 Fed. 446, 65 C. C. A. 580, 67 L. R. A. 550, pledgee of life policy who bids in policy on foreclosure sale may sell same to one having no insurable interest; Griffin v. Equitable Assur. Soc., 119 Ky. 861, 84 S. W. 1166, where policy made to one having no insurable interest is not absolutely void as wager and insured pays proceeds to such beneficiary without notice of want of insurable interest, he cannot be compelled to again pay to insurer's administrator; New York Life Ins. Co. v. Neal, 114 La. 660, 38 So. 488, determining right of heirs to take proceeds of policy where no beneficiary capable of taking exists; Mechanics' Nat. Bank v. Comins, 72 N. H. 15, 101 Am. St. Rep. 650, 55 Atl. 193, one advancing funds to conduct business of corporation may have insurable interest in life of manager; Hinton v. Mutual Reserve etc. Ins. Co., 135 N. C. 324, 102 Am. St. Rep. 545, 47 S. E. 477, 65 L. R. A. 161, where life policy payable to estate of insured was secured under agreement between insured and person having no insurable interest that latter would pay premiums and take proceeds, and policy assigned to him, he could not sue as administrator to secure proceeds under agreement; Brett v. Warnick, 44 Or. 520, 521, 102 Am. St. Rep. 639, 75 Pac. 1064, cousin of member of beneficial society may with assent of beneficiary, make contract with member for assignment of certificate as security for advances; Wilton v. New York Life Ins. Co., 34 Tex. Civ. 158, 78 S. W. 404, niece who lived with and was supported by uncle has no insurable interest in his life.

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104 U. S. 786-797, 26 L. 779, WOOD v. WEIMAR.

Syl. 1 (X, 244). Replevin by mortgagee of attached goods.

Approved in First Nat. Bank v. Steers, 9 Idaho, 525, 108 Am. St. Rep. 174, 75 Pac. 227, following rule.

Syl. 2 (X, 244). Error from state cost judgment.

Distinguished in Western Coal etc. Co. v. Petty, 132 Fed. 606, judgment at law denying costs to prevailing party is reviewable on error; Nutter v. Brown, 58 W. Va. 240, 52 S. E. 90, 1 L. R. A. (N. S.) 1083, decree respecting extraordinary costs such as expense and compensation of receiver is appealable.

Syl. 3 (X, 244). Mortgage—Misdescription of debt.

Approved in Holley v. Curry, 58 W. Va. 75, 112 Am. St. Rep. 948, 51 S. E. 137, writing containing clause that it is to secure A as executor of will of B, payment of whatever amount C may owe him as such executor on settlement is not new promise removing bar of limitations.

Syl. 4 (X, 244). Unrecorded mortgage—Possession by mortgagee.

Approved in First State Bank v. Sibley County Bank, 96 Minn. 463, 105 N. W. 488, holding reception of evidence to show oral agreement to make notes secured by mortgage running to creditor's agent, who was to sell lands and apply proceeds to debts, properly admitted and did not show express parol trust.

Syl. 6 (X, 245). Appeal—Objections in lower court.

Approved in Columbus Ry. Co. v. Patterson, 143 Fed. 250, objection to admissibility of deposition on ground that not shown that witness is not at time of trial within reach of subpoena will not be considered when first raised on appeal; Graves v. Bonness, 97 Minn. 281, 107 N. W. 164, refusing to reverse for admission of evidence objected to on ground that no sufficient foundation laid, where objection results in misdirection of trial court to only certain of several possible phases of preliminary proof; Territory v. Gonzales, 11 N. W. 458, 68 Pac. 925, holding insufficient assignment of error that verdict in larceny case is contrary to law and evidence.

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105 U. S. 3, 4, 26 L. 939, SWOPE v. LEFFINGWELL.

Syl. 2 (X, 246). Affirmance—State decision on federal question.

Approved in Nutt v. Knut, 200 U. S. 19, 50 L. 352, Sup. Ct. 246, one who insists that judgment cannot be rendered against him consistently with federal statutes asserts privilege and immunity under such statutes within Rev. St., § 709.

Syl. 4 (X, 246). Who may urge ultra vires.

Approved in State v. American Book Co., 69 Kan. 13, 76 Pac. 415, 1 L. R. A. (N. S.) 1041, contracts made with foreign corporation before it has obtained permission to do business in state under statute are not subject to cancellation by one of parties.

105 U. S. 7-12, 26 L. 998, POLLARD v. VINTON.

Syl. 1 (X, 247). Bill of lading as evidence of ownership.

Approved in McKelvey v. Perham, 31 Mont. 606, 79 Pac. 254, where defendant ordered lime for use on 6th and plaintiff put it on cars on 12th, and thereafter he received countermand but did not recall shipment, and kept bill of lading, defendant not obliged to accept lime on its arrival.

Syl. 2 (X, 247). Bill of lading as negotiable instrument.

See 105 Am. St. Rep. 334, 348, note.

Syl. 4 (X, 248). Bill of lading—Actual receipt of goods.

Approved in Roy v. Northern Pac. Ry. Co., 42 Wash. 579, 85 Pac. 55, act of carrier's agent in delivering bill of lading for goods which he knew were not delivered to carrier does not bind carrier as to innocent pledgee.

Syl. 5 (X, 248). Bill of lading—Goods not received.

Approved in Clark v. Clyde S. S. Co., 148 Fed. 244, steamer not liable for nondelivery of goods not actually received for shipment though it issued bills of lading therefor on receipts with name of its clerks forged; Arthur v. Texas etc. Ry. Co., 139 Fed. 132, where railroad issued bill of lading for cotton on compress company's platform on receipt of latter and cotton burned before actual delivery to railroad, latter not liable for negligence of compress company; Guffey v. Alaska etc. S. S. Co., 130 Fed. 275, 64 C. C. A. 517, where, at time goods delivered on wharf under bill of lading reciting goods to be shipped on vessel "now" at certain port, complainant knew vessel was at sea, and goods never delivered to ship, vessel not subject to maritime lien for breach of

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contract; Watkins Nat. Bank v. Cleveland etc. Ry. Co., 117 Mo. App. 252, 93 S. W. 846, carrier not liable to one to whom bill of lading issued before receipt of goods where they are afterward received but have spoiled in meantime; Roy v. Northern Pac. Ry. Co., 42 Wash. 576, 580, 85 Pac. 54, 56, act of carrier's agent in delivering bill of lading for goods which he knew were not delivered to carrier does not bind carrier as to innocent pledgee. See 105 Am. St. Rep. 352, note.

105 U. S. 13-24, 26 L. 961, GREENWOOD v. UNION FREIGHT R. CO.

Syl. 1 (X, 249). Suit by stockholder for corporation.

Approved in Doctor v. Harrington, 196 U. S. 588, 49 L. 610, 25 Sup. Ct. 355, fact that interests of corporation may be same as those of complaining stockholder does not require alignment with complainant where bill alleges corporation is under antagonistic control; Groel v. United Elec. Co., 132 Fed. 257, 262, 265, in suit by stockholder on right of action in corporation, latter aligned with either party according to facts, for purposes of federal jurisdiction; New York etc. R. Co. v. Offield, 77 Conn. 421, 59 Atl. 512, upholding right of railroad to condemn few shares of another railroad which it does not own, where improvements of other road necessary and it has not means to make them but condemning road has. See notes, 97 Am. St. Rep. 32; 103 Am. St. Rep. 560.

Distinguished in Kessler v. Ensley Co., 129 Fed. 404, contract by which officers have obtained property of corporation by actual fraud may be ratified by directors and disinterested majority of stockholders where they act fairly and to interest of corporation.

105 U. S. 24-36, 26 L. 1001, THE SCOTLAND.

Syl. 1 (X, 251). Maritime law, how far operative.

Approved in The Sacramento, 131 Fed. 374, following rule.

Syl. 6 (X, 252). Shipping—Limitation of liability.

Approved in Oceanic Steam Nav. Co. v. Aitken, 196 U. S. 598, 49 L. 614, 25 Sup. Ct. 317, damage to cargo from sinking of ship after reaching port due to imprudent unloading does not exempt owner of vessel under Harter Act, § 3.

Syl. 9 (X, 253). Collision—Law governing.

Approved in The Eagle Point, 142 Fed. 454, where two British vessels in fault for collision on high seas, cargo owner can recover only half loss from either vessel; In re Clyde S. S. Co., 134 Fed. 100, suit for damages for wrongful death caused by collision on high seas maintainable in admiralty where recovery for wrongful death allowable by statutes of state where both vessels belonged.

Distinguished in The Eagle Point, 136 Fed. 1014, where two British vessels are both in fault for collision on high seas, in suit in federal court cargo owner may recover full damages from either vessel.

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Syl. 11 (X, 254). Shipping—Limitation of liability—Damages.

Approved in The Lotta, 150 Fed. 222, where there was only one claim against vessel for negligent death, vessel owner cannot enjoin state suit to recover amount of liability determined in federal court.

Syl. 13 (X, 254). Collision—Loss of cargo—Measure of damages.

Distinguished in La Bourgogne, 139 Fed. 435, where passage or freight money is prepaid under contract by which it becomes property of shipowner whether voyage completed or not, it must be surrendered before liability limited.

105 U. S. 45-51, 26 L. 1028, HEAD v. HARGRAVE.

Syl. 2 (X, 255). Attorney's opinion as to value of services.

Approved in Walker Mfg. Co. v. Knox, 136 Fed. 340, 69 C. C. A. 160, in action for reasonable value of plaintiff's services it was no objection to recovery that witnesses disagreed as to price usually paid for such services; Denison v. Shawmut Min. Co., 135 Fed. 865, applying rule where evidence on question of market value of coal at mine was opinion evidence; Andrews v. Frierson, 144 Ala. 477, 39 So. 514, in determining value of auctioneer's services, register not bound to give credit to unimpeached expert evidence as to their value; Chicago etc. Ry. Co. v. Mysor Land Co., 163 Ind. 292, 69 N. E. 547, applying rule to damages in condemnation proceedings; Continental Ins. Co. v. Chicago etc. Ry. Co., 97 Minn. 476, 107 N. W. 552, applying rule to expert testimony as to practicability of locomotives operated so as not to start fires at distance involved; Restelsky v. Delmar Ave. etc. R. R. Co., 106 Mo. App. 389, 85 S. W. 667, applying rule in estimating damages to realty by reason of street grading; Meyer v. Michaels, 69 Neb. 146, 95 N. W. 66, applying rule in replevin where value of goods in issue.

105 U. S. 60-73, 26 L. 1008, TAYLOR v. YPSILANTE.

Syl. 2 (X, 258). Railroads—Power of eminent domain.

Cited in Detroit etc. R. R. Co. v. Campbell, 140 Mich. 387, 103 N. W. 857, arguendo.

Syl. 4 (X, 258). State decisions after bond issue.

Approved in Board of Commrs. v. Tollman, 145 Fed. 763, where at time county railroad aid bonds issued state supreme court had not constructed constitutional provision claimed to be violated by statute under which bonds issued, holder of coupons entitled to federal court's construction irrespective of state decisions rendered after issuance of bonds.

105 U. S. 73-76, 26 L. 1024, NEW BUFFALO TOWNSHIP v. IRON CO.

Syl. 1 (X, 259). State decision after bond issue.

Approved in Board of Commrs. v. Tollman, 145 Fed. 763, where at time county railroad aid bonds issued state supreme court had not construed constitutional provision claimed to be violated by statute under

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which bonds issued, holder of coupons entitled to federal court's construction irrespective of state decisions rendered after issuance of bonds.

Syl. 4 (X, 259). Railroad aid bonds—Consolidation.

Approved in Jones v. Missouri etc. El. Co., 135 Fed. 157, stockholder in one of two consolidated corporations cannot maintain bill to enforce rights based on theory that company still existed.

Distinguished in Jones v. Missouri etc. Elec. Co., 144 Fed. 775, minority holders of preferred stock may avoid consolidation of corporations which constituted fraud upon their rights.

105 U. S. 77-94, 26 L. 1111, HAMMOCK v. FARMERS' LOAN ETC. CO.

Syl. 1 (X, 259). Statutory construction—Punctuation.

Approved in Crawford v. Burke, 195 U. S. 192, 49 L. 153, 25 Sup. Ct. 9, construing Bankr. Act. 1898, § 17, subd. 4; Chicago etc. Ry. Co. v. Voelker, 129 Fed. 527, 65 C. C. A. 226, 70 L. R. A. 264, construing federal safety appliance act of 1898 and Code Iowa 1897, §§ 2097, 2080, requiring automatic couplers; Appleton v. American Matting Co., 65 N. J. Eq. 379, 54 Atl. 45, construing P. L. 1896, c. 185, § 30, as making directors liable for declaring dividends out of capital, though there is no dissolution or insolvency of corporation; State v. Banfield, 43 Or. 291, 72 Pac. 1095, construing Laws 1903, p. 339, amending certain acts.

105 U. S. 94-97, 26 L. 939, LEHNBEUTER v. HOLTHAUS.

Syl. 1 (X, 261). Patent as evidence of novelty.

Approved in Los Angeles Art Organ Co. v. Aeolian Co., 143 Fed. 884, Tremaine & Pain patent No. 552,796, for improvements in musical instruments using perforated music sheets, is infringed by device of Fleming patent No. 659,442; Bryce Bros. Co. v. Seneca Glass Co., 140 Fed. 171, Shrader patent No. 592,920, for machine for etching glassware, is infringed by machine of Schiffbauer patent No. 645,333; Atwood-Morrison Co. v. Sipp Electric etc. Co., 136 Fed. 860, upholding patent No. 729,084, for improvements in swift-brackets; Cleveland Foundry Co. v. Kauffman, 135 Fed. 361, 68 C. C. A. 658, upholding Jeavons patent No. 702,560, for oil-burner.

Syl. 3 (X, 262). Patents—Infringement as evidence of utility.

Approved in A. R. Milner etc. Co. v. Yesbera, 133 Fed. 919, 67 C. C. A. 210, upholding Milner patent No. 597,686, for improvements in counter stools for stores.

105 U. S. 97-99, 26 L. 967, UNITED STATES v. TEMPLE.

Syl. 1 (X, 262). Statutory construction.

Approved in Houghton v. Payne, 194 U. S. 100, 48 L. 891, 24 Sup. Ct. 590, banks complete in themselves are not, because published at stated intervals and in consecutive numbers, entitled to second-class postal rates under Comp. St. 1901, p. 2646.

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105 U. S. 100-122, 26 L. 1080, BLEMERHASSETT v. SHERMAN.

Syl. 3 (X, 263). Bankruptcy—Mortgage as preference.

Approved in In re McIntosh, 150 Fed. 549, unrecorded mortgage cannot be set aside as fraudulent at suit of mortgagor's trustee in absence of allegation that it was withheld from record by agreement or for fraudulent purpose; In re Shaw, 146 Fed. 276, 279, where bankrupt gave mortgage on tannery and materials therein, but by agreement not recorded nor possession taken, and mortgagee gave mortgage on bark which it held under mortgage, but last mortgage not recorded and constructive possession given agent of second mortgage, who appointed bankrupt custodian, both mortgages void as against bankrupt's trustee; Rogers v. Page, 140 Fed. 605, 606, where mortgage given by insolvent to brother for future advances not delivered until two years after signing under agreement not to record until necessary to protect mortgagee, was not recorded till few days prior to mortgagor's bankruptcy it was voidable preference; In re Noel, 137 Fed. 702, where succession of mortgages, first to secure loan and others to secure renewals thereof every forty-five days thereafter, were withheld from record for more than time prescribed by statute for recordation, to uphold mortgagor's credit last of series, though recorded, is void as to mortgagor's bankruptcy trustee; In re Ewald, 135 Fed. 170, act of creditor in withholding chattel mortgage from record by agreement with mortgagor until latter's bankruptcy does not affect right to prove debt in bankruptcy nor subordinate it to claims of subordinate creditors; Johnston v. Columbus etc. Banking Co., 85 Miss. 259, 260, 38 So. 103, where bank president conveyed property to bank and deeds withheld from record at his request so he could secure credit, bank's claim under conveyance postponed to other creditors of president's estate in probate.

Distinguished in In re Hunt, 139 Fed. 290, 291, mortgage of property in New York which by law need not be recorded except as to subsequent purchasers is not preference if executed more than four months prior to bankruptcy, unless it is withheld from record pursuant to fraudulent agreement.

105 U. S. 126-132, 26 L. 942, AGER v. MURRAY.

Syl. 3 (X, 264). Equity—Application of property to judgment.

Approved in In re Hurlbutt Hatch & Co., 135 Fed. 507, 68 C. C. A. 216, where member of stock exchange contributed seat to firm, which subsequently became bankrupt, bankruptcy court could compel him to transfer it for benefit of firm's bankruptcy trustee.

(X, 264). Miscellaneous. Cited in Bobbs-Merrill Co. v. Straus, 147 Fed. 18, determining right of owner of copyrighted book to sell under restriction as to price of resale.

Syl. 5 (X, 265). Subjection of patent right to debt.

Approved in O'Dell v. Boyden, 150 Fed. 736, on bankruptcy of member of stock exchange seat passes to trustee as assets of estate; In re Hurlbutt, 135 Fed. 507, 68 C. C. A. 216, where member of stock ex-

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change contributed seat to firm which subsequently became bankrupt, bankruptcy court could compel him to transfer it for benefit of firm's bankruptcy trustee.

Distinguished in Hildreth v. Thibodeau, 186 Mass. 84, 104 Am. St. Rep. 560, 71 N. E. 112, where record owners of patent were nonresidents and service made by delivery of copy of bill and notice in their state, court acquired no jurisdiction of suit in personam to obtain possession of patent.

105 U. S. 143-159, 26 L. 968, SCOVILL v. THAYER.

Syl. 4 (X, 266). Estoppel of stockholders to plead ultra vires.

Approved in Anglo-American Land etc. Co. v. Lombard, 132 Fed. 737, 743, 68 C. C. A. 89, where Kansas corporation largely indebted transferred all assets to Missouri corporation, which assumed obligation, and stockholders of former exchanged stock for stock in latter, liability of stockholders of former not affected, as contract was ultra vires of latter corporation; Stealey v. Kansas City, 179 Mo. 408, 78 S. W. 601, where, at time of passage of ordinance directing construction of sidewalks along certain street, street was outside city limits, construction of sidewalk did not estop city from denying liability for personal injuries caused by defects in walk.

Distinguished in Burnes v. Burnes, 132 Fed. 496, corporation which accepted transfer of own stock under its agreement to pay annuity to former owners and received dividends on such stock for several years, cannot plead ultra vires.

Syl. 10 (X, 268). Nonassessable stock—Creditor's rights.

Approved in Vaughn v. Alabama Nat. Bank, 143 Ala. 576, 42 So. 64, stockholder purchasing stock at less than par is liable to corporate creditors for difference between price paid and par value; Maryland Trust Co. v. National Mechanics' Bank, 102 Md. 627, 63 Atl. 77, holding Maryland Trust Company incorporated under Acts 1892, p. 156, c. 109, § 851, and Const., art. 3, § 39, cannot purchase its own stock.

Syl. 11 (X, 269). Capital stock as trust fund.

Approved in In re Remington etc. Motor Co., 139 Fed. 775, where corporation agreed with board of trade to sell it stock at less than par and latter gave it free factory site, neither board nor purchasers from it liable to further assessments on stock in favor of corporation's creditors.

Syl. 12 (X, 269). Compelling payment of unpaid stock subscription.

Approved in Commercial Bank v. Warthen, 119 Ga. 994, 47 S. E. 537, on bankruptcy of corporation trustee may sue for unpaid stock subscriptions.

Syl. 14 (X, 270). Stockholder's liability, when fixed.

Approved in Felker v. Sullivan, 34 Colo. 216, 83 Pac. 214, where corporation issued stock on payment of small sum per share and agreed

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not to call for further payments, corporation's bankruptcy trustee cannot sue on stock subscription until contract between corporation set aside as in fraud of creditors; Swing v. Brister, 87 Miss. 531, 40 So. 150, where mutual insurance company adjudged insolvent in 1890 and in 1901 supreme court of Ohio decreed assessments against policy-holders, limitations in favor of policy-holders did not run on assessments till liability became absolute; Chilberg v. Silbenbaum, 41 Wash. 667, 84 Pac. 600, stock subscription liability accrues on insolvency of corporation; Bennett v. Thorne, 36 Wash. 270, 78 Pac. 941, 68 L. R. A. 113, action against stockholders of bank for additional liability imposed by Const., art. 12, § 11, must be commenced within six years of bank's insolvency.

105 U. S. 166-174, 26 L. 1015, NEW ORLEANS ETC. R. R. CO. v. ELLERMAN.

Syl. 2 (X, 272). Who may plead ultra vires.

Approved in Wisconsin Lumber Co. v. Greene etc. Tel. Co., 127 Iowa 360, 109 Am. St. Rep. 387, 101 N. W. 745, 69 L. R. A. 968, stockholders cannot set aside ultra vires acts of corporation, which corporation may not take advantage of, unless conduct of directors worked substantial injury; State Ins. Co. v. Farmers' Mut. Ins. Co., 65 Neb. 41, 90 N. W. 1000, defendant sued for unearned premiums on policies issued by it cannot set up contract by which plaintiff obtained assignment of such premiums was ultra vires.

105 U. S. 175-183, 26 L. 1034, MARINE ETC. MANUFACTURING CO. v. BRADLEY.

Syl. 1 (X, 272). Federal suit by assignee.

Approved in Kolze v. Hoadley, 200 U. S. 83, 50 L. 381, 26 Sup. Ct. 220, trust deed cannot be foreclosed in federal court by assignee unless assignor could sue therein, though bill prays cancellation of release of trust deeds to grantor as in fraud of complainant.

Syl. 8 (X, 274). Corporation bonds—Transfer by receiver.

Approved in Cobe v. Ricketts, 111 Mo. App. 116, 85 S. W. 134, where decree directed master to advertise for bids for assets of loan society and plaintiff's bid accepted and commissioner authorized to execute deed, and it was ordered that notes should be assigned by receiver, without recourse, to plaintiff, latter obtained title on delivery of note indorsed by receiver without recourse.

105 U. S. 189-217, 26 L. 975, ROOT v. LAKE SHORE ETC. R. R. CO.

Syl. 1 (X, 274). Infringement of patent after expiration.

Approved in dissenting opinion in Continental Paper Bag Co. v. Eastern Paper Bag Co., 150 Fed. 748, majority holding fact that machine never put into commercial use does not preclude owner of patent from enjoining infringement.

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Distinguished in Saxlehner v. Eisner, 140 Fed. 940, fact that infringement of trademark has ceased before commencement of suit in equity therefor does not oust jurisdiction where bill alleges threatened and intended continuance of infringement.

Syl. 5 (X, 276). Equity—Adequate law remedy—Jury.

Approved in General Elec. Co. v. Westinghouse Elec. & Mfg. Co., 144 Fed. 466, where contract for manufacture and sale of electrical equipment provided penalty of fifty per cent of ordinary selling price for violation, violation of contract not enjoinable; Kane v. Luckman, 131 Fed. 618, refusing specific performance of contract for sale to plaintiff of number of cows at certain price per head where not shown cows have any distinctive value not determinable at law; Miller v. Schwarner, 130 Fed. 562, denying equity jurisdiction over suit for infringement of patent, where six days after service of process and prior to time to appear patent expired; Shields v. Johnson, 10 Idaho, 482, 79 Pac. 393, no jury required in action by party in possession to quiet title to leasehold estate under Rev. St. 1887, § 4538.

Syl. 6 (X, 276). Equity—Adequate law remedy.

Approved in Garside v. Norval, 1 Alaska, 24, where one cotenant of mining claim acting as agent of other sells his interest to third party, equity suit for accounting does not lie; Hoosier Constr. Co. v. National Bank of Commerce, 35 Ind. App. 276, 73 N. E. 1008, action for goods sold is action at law and triable by jury though complaint alleges defendant is entitled to certain credits, which sum cannot be stated, because unknown to plaintiff, and concludes with prayer for accounting.

Syl. 9 (X, 277). Patent infringement—Profits as damages.

Approved in Social Register Assn. v. Murphy, 129 Fed. 148, in equity suit for infringement of copyright no damages are recoverable beyond profits from infringement,

Syl. 10 (X, 277). Patent infringement—Accounting for profits.

Approved in Brown v. Lanyon, 148 Fed. 842, action at law cannot be maintained for sole purpose of recovering profits which infringer has made; Plotts v. Central Oil Co., 143 Fed. 902, suit for infringement of patent in which accounting and injunction asked properly dismissed where agreement for royalty shown, and insolvency or threat to use patented article without complainant's consent not shown; Regis v. Jaynes, 191 Mass. 247, 77 N. E. 775, decreeing account of profits where defendants in suit to restrain infringement of trademark persisted in infringement during litigation.

Distinguished in Johnson v. Fooss Mfg. Co., 141 Fed. 75, fact that defendant sued for infringement in making and selling patented machine has made and sold but one machine, and that pending suit purchaser was licensed by complainant, does not deprive equity of jurisdiction to enjoin.

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Syl. 11 (X, 278). Equity—Accounting for profits of infringer.

Approved in Miller v. Schwarner, 130 Fed. 562, following rule; Corbin v. Taussig, 137 Fed. 153, where one has exclusive agency for sale of goods manufactured by another in certain territory, recovery in equity against invader is limited to benefits derived by offending party from sales so made; dissenting opinion in Continental Paper Bag Co. v. Eastern Paper Bag Co., 150 Fed. 758, majority holding owner of patent may enjoin infringement though machine never put into commercial use.

Distinguished in Bay State Gas Co. v. Rogers, 147 Fed. 560, upholding equity jurisdiction over bill for profits of trustee arising out of trust; Victor Talking Machine Co. v. American Graphophone Co., 140 Fed. 861, prior agreement by which parties to suit for infringement of patent agree on terms of settlement on condition that patent is sustained does not oust jurisdiction.

Syl. 12 (X, 278). Equity jurisdiction in patent cases.

Approved in McMullen Lumber Co. v. Strother, 136 Fed. 303, 69 C. C. A. 433, where, under contracts for sale and delivery of large amounts of lumber of different grades at certain places, vendor gets vendee's agent drunk and memoranda of delivery rendered unreliable, bill of discovery lies in suit for accounting against vendor.

(X, 274). Miscellaneous. Cited in Wooster v. Crane, 147 Fed. 516, owner of equitable title to copyright may sue in equity in own name for infringement where owner of legal title is one of infringers.

105 U. S. 217-224, 26 L. 1039, CECIL NATIONAL BANK v. WATSON BANK.

Syl. 5 (X, 279). Transfer of stock on books.

Approved in Lipscomb v. Condon, 56 W. Va. 425, 107 Am. St. Rep. 946, 49 S. E. 395, 67 L. R. A. 670, attachment in favor of creditor of transferrer, does not prevail over title of transferee of stock not transferred on books.

105 U. S. 224-230, 26 L. 1117, WARREN v. STODDART.

Syl. 1 (X, 280). Contracts—Duty to lessen damages.

Approved in Indian Mt. etc. Coal Co. v. Ashville etc. Coal Co., 134 N. C. 588, 47 S. E. 121, applying rule in action on contract for delivery and sale of coal.

Distinguished in Moore & Co. v. Cornwall, 144 Fed. 33, ship owner not required to accept offer made during lay days contracted for in charter, where charterer refused to accept ship on erroneous construction of charter and owner had reason to think reasons assigned would be removed; Lillard v. Kentucky Dist. etc. Co., 134 Fed. 178, 67 C. C. A. 74, burden of proving damages sustained by reason of failure to furnish cattle pens and feeding troughs under contract for delivery of distillery slop, could have been minimized, is on party guilty of breach; Allen v. Field, 130 Fed. 653, 65 C. C. A. 19, where defendant agreed to buy

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all product of plaintiff's distillery for fifteen seasons, and defendant repudiated contract after two seasons, plaintiff not bound to operate distillery during remainder of term and sell product to minimize damages.

105 U. S. 235-236, 26 L. 1018, HECHT v. BOUGHTON.

Syl. 1 (X, 281). Appeal—Review of territorial judgment.

Distinguished in Shields v. Mongollon Exploration Co., 137 Fed. 543, 70 C. C. A. 123, under Alaska Civ. Code, § 504, ninth circuit court of appeals has jurisdiction on error to review decree in actions tried to court to recover interest in mining claim.

105 U. S. 237-243, 26 L. 1018, DAVENPORT v. COUNTY OF DODGE.

Syl. 1 (X, 282). County bonds for precinct.

Distinguished in Folsom v. Greenwood County, 130 Fed. 732, 734, county in South Carolina is not liable for payment of bonds issued before county created by township, which was at time in another county but has since its territory included in new county been dissolved.

(X, 282). Miscellaneous. Cited in Pratt v. Langston Mercantile Co., 111 Mo. App. 103, 85 S. W. 136, instrument having clause with sum affixed as penalty binding signers to pay same conditioned that it may be avoided by their performing their part of contract is bond, though it has no surety.

105 U. S. 244-246, 26 L. 985, UNITED STATES v. TYLER.

Syl. 1 (X, 283). Increased pay of retired army officer.

Approved in United States v. Mills, 197 U. S. 226, 227, 49 L. 734, 25 Sup. Ct. 434, pay on which increased pay to army officer serving in Philippines is computed under acts of 1900 and 1901, includes longevity pay under Rev. St., § 1262.

Distinguished in Reed v. Sehon, 2 Cal. App. 59, 83 Pac. 79, retired army officer is not holding office within Const., art. 4, § 20, making person holding lucrative office under United States ineligible to state office.

105 U. S. 247-249, 26 L. 986, BURLEY v. FLINT.

Syl. 1 (X, 284). Foreclosure without redemption—Attack.

Approved in Logan Co. v. McKinley etc. Trust Co., 70 Neb. 413, 101 N. W. 993, absolute order confirming tax sale which deprives decree debtor of right of redemption from tax sale given by statute or constitution is erroneous.

105 U. S. 249-252, 26 L. 1070, SCHEFFER v. WASHINGTON ETC. RAILWAY CO.

Syl. 1 (X, 284). Negligence—Proximate cause.

Approved in Jarnagin v. Travelers' Prot. Assn., 133 Fed. 895, 896, 66 C. C. A. 622, 68 L. R. A. 499, where deceased died from shot fired

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by third party while in custody of officer, proximate cause of death was shot and not negligence of officer in failing to protect him.

Syl. 2 (X, 284). Negligence—What is proximate cause.

Approved in United States Fidelity Co. v. Des Moines Nat. Bank, 145 Fed. 280, applying rule in action on fidelity bond of bank teller for loss of money while teller temporarily absent; W. K. Niver Coal Co. v. Cheronea S. S. Co., 142 Fed. 410, where large quantities of coal brought from Wales on account of Pennsylvania strike and congestion of vessels caused delay in discharging, strike not proximate cause of delay within charter exempting from demurrage for delay caused by strikes; Texas & P. Ry. Co. v. Coutourie, 135 Fed. 474, 68 C. C. A. 177, in action for loss of goods by fire while in carrier's possession through failure to protect goods, failure to distinguish between proximate and remote cause not reversible error, where jury instructed that defendant's negligence must have been direct cause of loss; Empire State Cattle Co. v. Atchinson etc. Ry. Co., 135 Fed. 142, where cattle shipped were unable to reach distination on account of flood, and shipment diverted and cattle put in yards, and unprecedented flood coming on, cattle driven into overhead viaducts where many died or were injured, proximate cause was flood; St. Louis etc. Ry. Co. v. Harrison, 76 Ark. 434, 89 S. W. 54, in action against carrier for assault by conductor during altercation over pass, error to refuse charge that jury should not consider fact that defendant negligently wrote date on pass so that it appeared to expire on May 1st instead of May 10th; Watters v. Waterloo, 126 Iowa, 205, 101 N. W. 874, where plaintiff injured by fall caused by defective sidewalk, which fall caused him to suffer from dizziness, fall and dizziness not proximate cause of injury sustained by fall on another street due to failure of city to clear sidewalk of ice; Setter v. Maysville, 114 Ky. 70, 69 S. W. 1075, where plaintiff alleged city negligently permitted street to be so obstructed that only narrow path left between car tracks and obstruction, city not liable for injury caused by street-car where motorman could have discovered peril in time to avoid accident; Moffatt Comm. Co. v. Union Pac. Ry. Co., 113 Mo. App. 547, 88 S. W. 117, carrier not liable for injuries to goods caused by unforeseen flood to which carrier's negligent delay in moving goods subjected them, dissenting opinion in Franklin v. Atlantic etc. Ry. Co., 74 S. C. 359, 54 S. E. 586, majority holding carrier not liable for indignities inflicted on passenger by fellow-passenger.

105 U. S. 253-258, 26 L. 987, GOULD'S MFG. CO. v. COWING.

Syl. 1 (X, 286). Patent infringement—Profits.

Approved in Westinghouse v. New York Air Brake Co., 140 Fed. 550, denying recovering of profits for infringement of Westinghouse patent No. 376,837, for improvement in air-brake valve; Regis v. Jaynes, 191 Mass. 251, 77 N. E. 777, on taking account of profits in suit where trademark infringement enjoined, defendant is liable for all profits irrespective of whether public actually deceived or not.

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105 U. S. 262, 26 L. 989, BRANDIES v. COCHRANE.

Syl. 1 (X, 287). Perfection of appeal.

Approved in Lockman v. Lang, 132 Fed. 4, where appeal allowed by taking of security within statutory time and transcript filed and cause docketed, failure to issue citation within time prescribed for appeal is no ground for dismissal; Simpson v. First Nat. Bank, 129 Fed. 259, 63 C. C. A. 371, where appeal allowed on condition that petitioner give bond in fixed amount, filing of assignment of errors at time of giving and acceptance of bond is in time.

105 U. S. 263-264, 26 L. 1021, UNITED STATES v. UNION PACIFIC R. R. CO.

Syl. 3 (X, 288). Appeal by government.

Approved in United States v. Choctaw etc. R. R. Co., 3 Okl. 454, 41 Pac. 746, in action in name of United States by private parties as relators, they must give security for costs on appeal; dissenting opinion in State v. Marsh, 134 N. C. 192, 47 S. E. 9, 67 L. R. A. 179, majority holding where on appeal in rape case conviction reversed because indictment in record did not show want of consent, whereas allegation omitted from printed record by misprision of clerk, supreme clerk could after term grant certiorari for correction of record.

105 U. S. 265-267, 26 L. 1025, KEYSER v. FARR.

Syl. 1 (X, 288). Acceptance of appeal bond.

Approved in Clarke v. Eureka Co. Bank, 131 Fed. 146, where supersedeas bond accepted, writ of error allowed and citation issued, motion to increase bond is within exclusive jurisdiction of appellate court; dissenting opinion in Sullivan v. Woods, 5 Ariz. 202, 50 Pac. 116, majority holding where district court on appeal overruled motion for new trial and plaintiff gave notice of appeal and filed appeal bond, district court could during term vacate judgment.

(X, 288.) Miscellaneous. Cited in Mackenzie v. Pease, 146 Fed. 744, circuit court of appeals may during term vacate order allowing appeal inadvertently entered.

105 U. S. 271-278, 26 L. 1087, SIMMONS v. OGLE.

Syl. 1 (X, 284). Adverse possession—Title in government.

Approved in Teegarden v. Le Marchel, 129 Fed. 489, following rule; Tyee Consol. Min. Co. v. Langstedt, 136 Fed. 126, 69 C. C. A. 548, there is no disseisin sufficient to start statute of limitations against locator of mining claim prior to issuance of patent to him.

105 U. S. 278-302, 26 L. 1090, LOUISIANA v. PILLSBURY.

Syl. 1 (X, 290). Consolidation of municipalities—Debts.

Approved in City of Ft. Madison v. Ft. Madison etc. Co., 134 Fed. 216, 67 C. C. A. 142, Code Iowa 1897, § 1305, providing for assessment of property at quarter of actual value is void in so far as

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it affects ability of city to meet prior contract for water rentals made when statute required assessments at true cash value.

Distinguished in Wichman v. Placerville, 147 Cal. 164, 81 Pac. 538, Stat. 1863, p. 211, reincorporating Placerville repealed Stat. 1863, p. 166, authorizing city to issue fire department relief bonds, and reincorporated city could not issue such bonds.

Syl. 7 (X, 291). Construction of adopted statute.

Approved in York v. Washburn, 129 Fed. 567, 570, 64 C. C. A. 132, whether or not oral contract for lease of realty for more than one year is void or voidable under laws of state where property situated is determined by federal courts according to decisions of that state.

Distinguished in dissenting opinion in Muhlker v. New York etc. R. R. Co., 197 U. S. 573, 49 L. 879, 25 Sup. Ct. 522, majority holding owner of land abutting on street who derived title from grantor to city, in trust for public highway, and acquired title when state courts had held that one so situated had contract easement of light and air, cannot have easement impaired by substitution of elevated road for surface road at command of state.

(IX, 290.) Miscellaneous. Cited in Arnold v. Knoxville, 115 Tenn. 215, 90 S. W. 473, upholding Acts 1905, p. 585, authorizing levy of special assessments for municipal improvements on abutting property benefited thereby.

105 U. S. 305-318, 26 L. 1044, SUPERVISORS OF ALBANY CO. v. STANLEY.

Syl. 2 (X, 292). Who objects to validity of class tax.

Approved in Marvin v. Trout, 199 U. S. 227, 50 L. 163, 26 Sup. Ct. 31, objection of denial of due process to owner of gambling property by Ohio statute making judgment in action against those who won money there conclusive as to amount of loss in action to charge property of owner is not open to owner where there is other evidence as to losses; Smiley v. Kansas, 196 U. S. 457, 49 L. 551, 25 Sup. Ct. 289, upholding Kansas anti-trust law of 1897 as forbidding four competitive wheat buyers in single town to enter into agreement under which, if either purchase more than fourth of wheat in market, he should pay others three cents per bushel on excess. See 112 Am. St. Rep. 650, note.

Syl. 3 (X, 292). National bank tax—Discrimination.

Approved in Ankeny v. Blakley, 44 Or. 86, 74 Pac. 488, enjoining assessment of taxes on national bank stock on ground that assessment was so excessive as compared with taxes assessed on other moneyed capital as to amount to illegal discrimination.

Syl. 4 (X, 293). Statutes void in part.

Approved in Michigan R. R. Tax Cases, 138 Fed. 244, upholding Mich. Pub. Acts 1901, p. 236, relating to assessment of railroad prop-

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erty; Attorney General v. Electric etc. Battery Co., 188 Mass. 241, 74 N. E. 468, Stat. 1903, pp. 447, 450, §§ 66, 67, 75, requiring corporations to file certificate of certain facts and to pay excess tax, is valid and applies to interstate corporation which has also place of business in state for domestic business.

Syl. 5 (X, 293). State tax on national bank shares.

Approved in State v. Flemming, 70 Neb. 526, 97 N. W. 1064, upholding Sess. Laws 1903, c. 73, relating to taxation as applied to foreign insurance companies.

105 U. S. 319-322, 26 L. 1052, HILLS v. NATIONAL ALBANY EXCHANGE BANK.

Syl. 2 (X, 294). State tax on national bank shares.

Approved in Ankeny v. Blakley, 44 Or. 86, 74 Pac. 488, enjoining collection of taxes on national bank stock because assessment so excessive as compared with taxes on other money capital as to be discriminatory.

Distinguished in dissenting opinion in San Francisco Nat. Bank v. Dodge, 197 U. S. 112, 49 L. 687, 25 Sup. Ct. 384, majority enjoining enforcement of tax on shares of national bank imposed under Cal. Pol. Code, §§ 3608-3610.

Syl. 3 (X, 294). Taxes—Bank's suit for stockholder.

Approved in San Francisco Nat. Bank v. Dodge, 197 U. S. 75, 49 L. 672, 25 Sup. Ct. 384, following rule.

Syl. 6 (X, 295). Tender of performance.

Approved in Pierce v. Lukens, 144 Cal. 401, 77 Pac. 997, where defendant in selling bonds agreed to repurchase within three years at plaintiff's election, and when latter called to sell said he did not remember but for plaintiff to send him letter, which was done, and he replied soliciting further correspondence, but such letter could not reach plaintiff within three years, latter could sue without tender.

105 U. S. 322-327, 26 L. 1053, EVANSVILLE NATIONAL BANK v. BRITTON.

Syl. 1 (X, 296). Taxes—Bank's suit for stockholders.

Approved in dissenting opinion in San Francisco Nat. Bank v. Dodge, 197 U. S. 112, 49 L. 687, 25 Sup. Ct. 384, majority enjoining enforcement of tax on shares of national bank imposed under Cal. Pol. Code, §§ 3608-3610.

Syl. 2 (X, 296). State tax on bank shares.

Approved in Adams v. Kuykendall, 83 Miss. 585, 35 So. 832, Nicksburg Charter, § 31, exempting from taxation bills and notes given for property within city subject to taxation, violates constitutional provision requiring uniform taxation; Ankeny v. Blakley, 44 Or. 86,

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74 Pac. 488, enjoining collection of taxes on national bank stock because so excessive as compared with taxes on other moneyed capital as to be discriminatory.

105 U. S. 350-355, 26 L. 1055, KNICKERBOCKER LIFE INS. CO. v. FOLEY.

Syl. 4 (X, 299). Insurance—Answer as to sobriety.

Approved in Packard v. Metropolitan Life Ins. Co., 72 N. H. 3, 54 Atl. 288, construing expression "sound health" in life policy; Puls v. Grand Lodge A. O. U. W., 13 N. D. 567, 102 N. W. 166, where in insurance application insured stated he was not addicted to intoxicating liquors and never drank immoderately, evidence that he sometimes drank and on few occasions seemed to be drunk does not show representations false.

105 U. S. 355-362, 26 L. 990, BENNECKE v. CONNECTICUT MUT. LIFE INS. CO.

Syl. 1 (X, 299). Contracts—Waiver of stipulations.

Approved in Stephens v. Essex County Park Commission, 143 Fed. 847, building contract provision for payment of certain sum for each day's delay in completion not waived by failure to answer contractor's letter explaining cause of delay and asking extension; Moore v. Mutual Life Assn., 133 Mich. 533, 95 N. W. 576, holding information by insurer of falsity of some statements in application did not estop it from relying on other warranties; Gish v. Insurance Co. of North America, 16 Okl. 74, 87 Pac. 874, determining question of waiver of conditions as to inventory and iron safe; Whigham v. Independent Order of Foresters, 44 Or. 554, 75 Pac. 1069, where none of officers of benefit society knew what answers made to questions in application and physician did not know applicant personally and forwarded application to head office, order not estopped to declare forfeiture for breach of warranty because officers knew applicant intemperate in habits.

Distinguished in Monahan v. Mutual Ins. Co., 103 Md. 159, 63 Atl. 213, 5 L. R. A. (N. S.) 759, receipt of premiums estops insured from denying validity of policy providing it should be void if other insurance in force, where it did not learn of other insurance on account of system of bookkeeping.

Syl. 2 (X, 300). Ratification of agent's unauthorized act.

Approved in Stephens v. Essex County Park Commission, 143 Fed. 848, where building contract provided for certificate by architect for progress payments and authorized deduction for each day's delay in completion, except where work suspended by architect, issuance of certificates for work done after time fixed is not admission that delay consented to by architect.

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105 U. S. 381-392, 26 L. 1100, THE FRANCIS WRIGHT.

Syl. 2 (X, 302). Appeal—Refusal to find on issue.

Approved in Wiser v. Lawler, 7 Ariz. 184, 62 Pac. 700, applying rule on equity appeal.

Syl. 4 (X, 302). Appeal—Incidental facts not in record.

Approved in United States Fidelity etc. Co. v. Board of Commrs., 145 Fed. 151, applying rule in action on fidelity bond; Barnsdall v. Waltemeyer, 142 Fed. 417, finding of fact in case tried to court not reviewable when there was substantial evidence to sustain it; Eureka Co. Bank v. Clarke, 130 Fed. 327, 64 C. C. A. 571, where action for conversion tried to court, appellate court is precluded from reviewing sufficiency of evidence unless there was absolutely no evidence to support findings; Phenix Ins. Co. v. Kerr, 129 Fed. 724, 64 C. C. A. 251, 66 L. R. A. 569, where at close of jury trial each side requests peremptory instruction, and court grants one request only, question reviewable is sufficiency of evidence; Wiser v. Lawler, 7 Ariz. 183, 62 Pac. 700, applying rule in equity appeal.

105 U. S. 393-401, 26 L. 1072, HEWITT v. PHELPS.

Syl. 3 (X, 303). Equity—Services rendered for trust.

Approved in Gates v. McClenahan, 124 Iowa, 596, 100 N. W. 480, where nonresidents, appointed executors of foreign will, employed complainants as attorneys to recover land in Iowa devised by will, complainants could sue executors in equity in Iowa without first exhausting legal remedy.

105 U. S. 401-408, 26 L. 1075, HAUSELT v. HARRISON.

Syl. 1 (X, 303). Bankruptcy—Advances—Mortgage.

Approved in Cincinnati etc. Warehouse Co. v. Leslie, 117 Ky. 485, 78 S. W. 415, 64 L. R. A. 219, where corporation advanced money to bankrupt to buy goods to be shipped to former for sale under agreement that it was to have lien on goods, and debt to be paid out of proceeds of sale, corporation's lien passed to its successor, who purchased assets on its insolvency.

Syl. 2 (X, 303). Validity of unrecorded chattel mortgages.

Approved in Heisch v. Bell, 11 N. M. 531, 70 Pac. 573, bill of sale given on exempt personal property is not void as to creditors, though unacknowledged and unrecorded; Christ v. Zehner, 212 Pa. 192, 61 Atl. 823, where bill of sale given to secure loan, but possession not taken was, within four months of bankruptcy of purchaser, indorsed to effect that loan still due and that possession given vendee, there was no unlawful preference.

Syl. 3 (X, 304). Bankruptcy assignor's title—Equities.

Approved in Thompson v. Fairbanks, 196 U. S. 526, 49 L. 586, 25 Sup. Ct. 306, enforcement of lien of valid chattel mortgage by taking

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possession after condition broken as authorized by mortgage, with knowledge of mortgagor's contemplated bankruptcy, is not voidable preference, though possession taken within four months of bankruptcy; In re Cramond, 145 Fed. 976, where city contractor on assuming contract assigned right to payment to bank to secure money to do work, bank acquired equitable lien superior to laborer's lien under Bankr. Act, c. 54, § 64. See 104 Am. St. Rep. 913, note.

(X, 303.) Miscellaneous. Cited in O'Neal v. Richardson, 78 Ark. 137, 92 S. W. 1118, as to correction of written by oral instructions.

105 U. S. 418-422, 26 L. 1131, UNITED STATES v. RINDSKOPF.

Syl. 2 (X, 306). Revenue commissioner's assessment of tax.

Approved in Western Express Co. v. United States, 141 Fed. 30, following rule; United States v. Cole, 134 Fed. 699, upholding finding for government in suit for assessment on unreported spirits distilled from certain amount of fruit, where defendant admitted reception of fruit, but failed to account for destruction of fruit or spirits distilled therefrom.

105 U. S. 430-432, 26 L. 1142, DOWELL v. MITCHELL.

Syl. 1 (X, 306). Equity—Dismissal for lack of jurisdiction.

Approved in Fowler v. Osgood, 141 Fed. 24, applying rule where demurrer to petition by foreign receiver dismissed for want of jurisdiction; Indian Land & T. Co. v. Shoenfelt, 135 Fed. 487, 68 C. C. A. 196, where equity has no jurisdiction, decree of dismissal must expressly adjudge dismissal on that ground or that it is made without prejudice; Hatcher v. Hendrie etc. Supply Co., 133 Fed. 272, 68 C. C. A. 19, arguendo.

105 U. S. 433-447, 26 L. 1060, RUSSELL v. FARLEY.

Syl. 1 (X, 306). No appeal from costs decree.

Distinguished in Western Coal etc. Co. v. Petty, 132 Fed. 606, in federal law action where prevailing party is entitled to costs as of right, judgment on dismissal denying such right is reviewable on error; Nutter v. Brown, 58 W. Va. 240, 52 S. E. 90, 1 L. R. A. (N. S.) 1083, decree respecting allowance and compensation of receivers is appealable.

Syl. 2 (X, 307). Injunction—Damages where bond waived.

Approved in Baer v. Fidelity & Deposit Co., 130 Fed. 97, 64 C. C. A. 428, applying rule where court ordered bond given to defendant in receivership proceedings to indemnify him against damages sustained by depositing money on dismissal of receivership.

Syl. 3 (X, 307). Injunction bond for damages.

Approved in Hoy v. Altoona etc. Oil Co., 136 Fed. 485, granting preliminary injunction on bill to recover shares of stock fraudulently obtained by defendant from complainant; Harriman v. Northern Se-

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curities Co., 132 Fed. 476, granting preliminary injunction against transferring stock received from plaintiff under agreement to former merger declared void by courts; State v. Sunapee Dam Co., 72 N. H. 122, 55 Atl. 904, where, in suit to restrain dam owner from operating it to injury of other shore owners injunction withheld, equity had jurisdiction to ascertain damages.

Syl. 4 (X, 307). Damages on injunction bond.

Approved in Empire State etc. Co. v. Hanley, 136 Fed. 104, 69 C. C. A. 87, where, after affirmance, appellee filed in trial court motion to proceed, containing notice to sureties on supersedeas bond of application for summary decree on bond, which was served on surety, court could render judgment against surety under Idaho Code, § 3576; Dougal v. Eby, 11 Idaho, 797, 85 Pac. 103, where claim made against sureties on injunction bond, summary judgment cannot be entered against sureties on dissolution of injunction.

105 U. S. 447-451, 26 L. 1065, THE S. S. OSBORNE.

Syl. 2 (X, 308). Lower court's jurisdiction after appeal.

Approved in First Nat. Bank v. State Nat. Bank, 131 Fed. 431, 65 C. C. A. 414, where appeal perfected under Bankr. Act, § 25a, from judgment rejecting debt, district court cannot entertain motion for rehearing pending appeal.

105 U. S. 451-453, 26 L. 1066, EX PARTE SLAYTON.

Syl. 1 (X, 308). Shipping—Limitation of liability.

Approved in The Sacramento, 131 Fed. 374, where petition to limit liability of vessel and cargo for collision failed to state facts, by reason of which exemption claimed as required by rule 56, it was insufficient to contest question of vessel's fault.

105 U. S. 454-459, 26 L. 1133, LOUISIANA v. TAYLOR.

(X, 309.) Miscellaneous. Cited in Mial v. Ellington, 134 N. C. 165, 46 S. E. 973, 65 L. R. A. 697, officer appointed to public office for definite time has no contract or vested property interest therein of which legislature cannot deprive him.

105 U. S. 460-466, 26 L. 1067, WESTERN UNION TELEGRAPH CO. v. TEXAS.

Syl. 1 (X, 309). Telegraph as instrument of commerce.

Approved in Ames v. Kirby, 71 N. J. L. 445, 59 Atl. 559, P. L. 1898, p. 812, prohibiting poolrooms, is violated by keeping resort for gamblers whose wagers are made by telegraph with persons outside of state; Butner v. Western Union Tel. Co., 2 Okl. 248, 37 Pac. 1091, upholding territorial act regulating order of receipt and transmission of telegrams, but which does not attempt to regulate delivery of messages outside of territory; Postal Tel. Cable Co. v. Umstadter, 103 Va. 743, 50 S. E. 260, upholding Code 1887, § 1291, imposing

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penalty on telegraph company for failure to transmit message; dissenting opinion in Western Union Tel. Co. v. Hughes, 104 Va. 246, 51 S. E. 227, majority holding where points of transmission and delivery of telegram were in same state, fact that part of transmission made through another state does not prevent it from being subject to state statute penalizing delay.

Syl. 3 (X, 309). State tax on telegraph company.

Approved in People v. Reardon, 184 N. Y. 455, 112 Am. St. Rep. 644, 77 N. E. 978, Laws 1905, pp. 474, 477, c. 241, imposing tax on transfers of stock, is valid and applies only to transfers taking place in state. See 112 Am. St. Rep. 650, note.

Syl. 4 (X, 310). Commerce—State tax on telegrams.

Approved in Western Union Tel. Co. v. Village of Wakefield, 69 Neb. 276, 277, 95 N. W. 661, determining right of village to impose occupation tax on telegraph company.

Distinguished in Western Union Tel. Co. v. Pennsylvania R. R. Co., 195 U. S. 565, 49 L. 321, 25 Sup. Ct. 133, telegraph company cannot, under act of July 24, 1866, occupy railroad right of way for its lines without consent of railroad.

105 U. S. 467-470, 26 L. 949, THATCHER v. ROCKWELL.

Syl. 2 (X, 312). Continuance of suit in bankrupt's name.

Approved in Griffin v. Mutual Life Ins. Co., 119 Ga. 665, 46 S. E. 871, if no trustee appointed, bankrupt's debtor not discharged from liability of action pending at time of adjudication.

Syl. 3 (X, 312). Conclusiveness of judgment on bankruptcy assignee.

Approved in Christy v. Des Moines City Ry. Co., 126 Iowa, 436, 102 N. W. 197, where, after verdict for defendant, plaintiff adjudged bankrupt and trustee substituted, plaintiff could prosecute appeal on trustee's filing written consent thereto.

105 U. S. 470-509, 26 L. 1143, NEWPORT ETC. BRIDGE CO. v. UNITED STATES.

Syl. 6 (X, 313). Bridges—Modification of plans—Damages.

Distinguished in United States v. Parkerburg Branch R. Co., 143 Fed. 230, railroad bridge over navigable stream built under authority of federal act containing no provision as to repeal or modification can only be required to be removed on payment of compensation.

105 U. S. 509-526, 26 L. 951, FRENCH v. GAPEN.

Syl. 2 (X, 313). Intervention—Failure to object.

Approved in Bechtol v. Bechtol, 2 Alaska, 399, wife cannot intervene in suit by father in law against husband to declare trust in placer claim; Flournoy v. Bullock, 11 N. M. 103, 66 Pac. 549, 55 L.

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R. A. 745, where receiver appointed for partnership, simple contract creditor having no lien cannot intervene in suit; Hockaday v. Drye, 7 Okl. 294, 54 Pac. 477, where insolvent made general assignment and before time for filing inventory property sold under attachment and proceeds put in custody of court for distribution, general creditors may interplead in attachment and ask pro rata distribution by receiver.

105 U. S. 527-538, 26 L. 1157, TRUSTEES FLA. INTERNAL IMP. FUND v. GREENOUGH.

Syl. 1 (X, 313). No appeal from costs decree.

Distinguished in Nutter v. Brown, 58 W. Va. 240, 52 S. E. 90, 1 L. R. A. (N. S.) 1083, decree respecting allowance of expenses and compensation of receivers is appealable.

Syl. 3 (X, 314). Appeal—Decree for receiver's costs.

Approved in Ruggles v. Patton, 143 Fed. 314, 315, order authorizing receiver to pay himself from funds in his hands certain sum for past services as receiver is appealable; Nutter v. Brown, 58 W. Va. 240, 244, 52 S. E. 90, 91, 1 L. R. A. (N. S.) 1083, decree respecting allowance of expenses and compensation of receivers is appealable.

Syl. 4 (X, 314). Appeal—Final decree.

Approved in Cassett v. Mitchell Coal & Coke Co., 150 Fed. 35, order in action against railroad for violation of interstate commerce act, requiring railroad officials to produce books containing information as to rebates, is final decision reviewable on error.

Distinguished in Heinze v. Butte etc. Min. Co., 129 Fed. 338, 64 C. C. A. 15, orders approving receiver's monthly reports and directing him to pay expenses incurred by him, made before final account, are not appealable.

Syl. 6 (X, 314). Expenses payable out of trust fund.

Approved in Bartholomew v. Union Trust Co. (Meyers v. Mutual Life Ins. Co.), 36 Ind. App. 329, 75 N. E. 31, following rule; McCourt v. Singers-Bigger, 145 Fed. 114, stockholder, who, by suit on behalf of corporation, recovers fund diverted by its officers, is entitled to payment of expenses of suit therefrom, but other stockholders who resist suit in name of company are not; Receivers of Virginia etc. Coke Co. v. Staake, 133 Fed. 721, 66 C. C. A. 547, bankruptcy court may allow attachment creditors, who obtained liens on property which trustee could not otherwise reach, attorney's fees on ordering attachment liens for benefit of estate; Cuyler v. Atlantic etc. R. Co., 132 Fed. 572, upholding allowance of counsel fees to complainant who as joint owner has sued for preservation of property which has been brought into control of court; The Gordon Campbell, 131 Fed. 967, allowing single docket fee to proctor in admiralty who repre-

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sents more than one petitioner; Lamar v. Hall, 129 Fed. 83, 63 C. C. A. 521, where lien creditors obtained appointment of receiver for corporation, and petitioner, as attorney for minority stockholders, filed bill alleging bad faith in bringing first suit and praying appointment of receiver, and co-receiver appointed, but bad faith not proven at trial and sale was set aside on petitioner's motion and resale made for higher price, petitioner not entitled to attorney's fees out of proceeds of sale; Estate of O'Connor, 2 Cal. App. 478, 84 Pac. 320, testamentary trustee instituting proceedings to compel executor to account and distribute estate is entitled to counsel fees on his accounting; Bradshaw v. Bank of Little Rock, 76 Ark. 504, 505, 89 S. W. 317, application for fees of attorneys for plaintiff in action by single creditor to wind up insolvent corporation may be made by attorneys; Kimble v. Board of Commrs., 32 Ind. App. 389, 66 N. E. 1027, where defendants formed association for collection of misappropriated county funds and collected various sums, they are entitled to attorney's fees out of funds recovered; Louisville etc. Seminary v. Botto, 117 Ky. 974, 80 S. W. 180, where effect of contest by some of legatees to set aside codicils was to increase amounts received by other legatees, expenses of contest should be paid out of shares of all; Sprague v. Moore, 136 Mich. 431, 99 N. W. 379, denying allowance out of fund to complainant's solicitor where solicitor's services in bill to compel trustee to account are adverse to trust fund; Coffman v. Gates, 110 Mo. App. 488, 85 S. W. 660, where one holding interest in land in fee and rest as trustee expended money in defense of ejectment suit, he is entitled to reimbursement out of trust property, but cannot hold cestui que trust individually therefor in partition suit; Park v. Laurens, 68 S. C. 218, 46 S. E. 1014, where citizen employed attorney to compel performance of duties by city officials, and suit brought funds into city treasury, city not liable for attorney's fees; Carpenter v. U. S. Fidelity etc. Co., 123 Wis. 216, 101 N. W. 407, county court may, after administrator has become defaulter without having paid attorney's fees, decree that value thereof should constitute lien on assets of estate in favor of attorneys; Butler v. Conwell, 14 Wyo. 172, 82 Pac. 951, where creditors of insolvent consented to complainant's employment as their attorney to recover funds of insolvent, complainant has preferred claim on fund for services.

Syl. 9 (X, 316). Attorney's fees of conserver of trust fund.

Approved in Forrester v. Boston etc. Mining Co., 29 Mont. 411, 74 Pac. 1094, in suit by minority stockholders to restrain and cancel transfer of corporation's property, value of property and not value of plaintiff's stock is considered in determining plaintiff's counsel fees.

Syl. 11 (X, 316). Discretion—Costs and expenses—Trust fund.

Approved in Bartholomew v. Union Trust Co. (Meyers v. Mutual Life Ins. Co.), 36 Ind. App. 330, 75 N. E. 32, following rule.

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(X, 313.) Miscellaneous. Cited in Werckmeister v. American Lith. Co., 134 Fed. 323, 68 L. R. A. 591, copyright is incorporeal right to print and publish.

105 U. S. 550-552, 26 L. 1106, GUIDET v. BROOKLYN.

Syl. 2 (X, 318). Patents—Change in form.

Approved in Bullock Electric Mfg. Co. v. General Electric Co., 149 Fed. 417, holding Reist patent No. 508,637, for improvement in armature cores, void for want of novelty.

105 U. S. 553-558, 26 L. 1166, GORDON v. BUTLER.

Syl. 2 (X, 318). Fraud—Opinion as to value.

Approved in Pittsburg Life etc. Co. v. Northern etc. Ins. Co., 140 Fed. 896, where on sale of business of life insurance company list of accounts against agents shown, and defendant's secretary said they had charged off bad ones and that those remaining were better than ordinary, there was no basis of deceit because some accounts disputed; Kimber v. Young, 137 Fed. 749, 70 C. C. A. 178, in action for deceit in sale of corporate bonds, allegations that defendant said he knew bonds were good and would be paid at maturity are insufficient; Brown v. South Joplin Lead etc. Co., 194 Mo. 701, 92 S. W. 704, action for deceit cannot be predicated on statement of party that body of ore through which hole drilled is pay ore, though opinion afterward shown to be unwarranted.

105 U. S. 576-578, 26 L. 1176, CORBIN v. VAN BRUNT.

Syl. 1 (X, 321). Removal—Separable controversy.

Approved in City of Cleveland v. Cleveland etc. Ry. Co., 147 Fed. 176, denying right to remove ejectment suit in which lessor and lessee joined as defendants where no separable controversy shown; Groel v. United States Electric Co., 132 Fed. 254, in determining federal jurisdiction in suit by stockholder on right of action in corporation, latter aligned with complainant or defendant according to facts.

105 U. S. 578-580, 26 L. 1176, EX PARTE HOARD.

Syl. 1 (X, 321). Mandamus to compel remand.

Approved in Thomas v. Great Northern Ry. Co., 147 Fed. 87, where, after cause erroneously removed over plaintiff's objection, federal court sustained demurrer of resident defendant to complaint, plaintiff did not waive objection against removal by amending and proceeding against nonresident defendant.

105 U. S. 580-599, 26 L. 1177, WEBSTER LOOM CO. v. HIGGINS.

Syl. 1 (X, 321). Patents—When specifications sufficient.

Approved in Thomson-Houston Elec. Co. v. Black River Traction Co., 135 Fed. 763, 68 C. C. A. 461, upholding and construing Van

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Depoele reissue No. 11,892, for traveling contact for electric railways; Wolff v. Du Pont etc. & Co., 134 Fed. 865, 67 C. C. A. 488, holding Von Freeden patent No. 429,516, for process of making smokeless powder, valid as to claim 1, but void as to claim 2.

Syl. 3 (X, 322). Patent for improvement—Specifications.

Approved in National etc. S. Co. v. De Forest etc. Tel. Co., 140 Fed. 454, upholding Fessenden reissue No. 12,115, for receiver for wireless telegraph apparatus; Chicago Wooden Ware Co. v. Miller etc. Co., 133 Fed. 546, 66 C. C. A. 517, upholding Miller patents No. 343,829, for folding trestle; Kip Armstrong Co. v. King Philip Mills, 130 Fed. 30, word "rotary" in claim of Baker patent No. 595,688, for warp stop-motion for looms, to describe element of combination, does not limit claim by reading into it mechanism for continuous rotation.

Syl. 5 (X, 322). Patent—Combination producing new result.

Approved in American Caramel Co. v. Thomas Mills & Bro., 149 Fed. 746, upholding Hershey patent No. 532,554, for candy-cutting machine; Cutler etc. Co. v. Union Elec. Mfg. Co., 147 Fed. 272, upholding Blades patent No. 418,678, for electric switch for motors; Robins etc. Belt Co. v. American etc. Mach. Co., 145 Fed. 926, upholding Robins patent No. 571,604, claims 5, 6, for troughing idlers for belt conveyors; Comptograph Co. v. Mechanical Acct. Co., 145 Fed. 337, upholding Felt patent No. 465,255, for computing machine, covering subtraction cutoff; Koerner v. Deuther, 143 Fed. 547, upholding Koerner patent No. 392,735, for printers' drying racks; International Time Recording Co. v. Dey, 142 Fed. 743, upholding Cooper patent No. 528,223, for workman's time recorder; Bullock Elec. Mfg. Co. v. Crocker-Wheeler Co., 141 Fed. 106, upholding Leonard patent No. 478,344, for system of electrical distribution; Bryce Bros. Co. v. Seneca Glass Co., 140 Fed. 171, upholding Schrader patent No. 592,920, for engraving machine for etching glass; Brown Bag Filling Mach. Co. v. Drohen, 140 Fed. 101, upholding Cummings patent No. 573,171, for paper-bag filling machine; Capewell v. Goldsmith, 138 Fed. 686, holding Capewell patent No. 630,972, for stick-pin retainer, void in view of prior act; Rumford Chem. Wks. v. New York Baking Powder Co., 134 Fed. 388, 67 C. C. A. 367, upholding Catlin patent No. 474,811, for baking-powder; Albright v. Langfeld, 131 Fed. 475, upholding Albright patent No. 439,086, for coin purse; Bechtold v. Nowacke, 131 Fed. 277, upholding Bechtold patent No. 682,448, for comb or hair-retainer; Thomson-Houston El. Co. v. Ohio Brass Co., 129 Fed. 381, upholding Van Depoele patent No. 394,039, claim 18, for insulated turn-buckle.

Distinguished in New York Belting etc. Co. v. Sierer, 149 Fed. 768, holding Furness & Watts patent No. 527,961, for tile floor, void for lack of invention in view of prior art.

Syl. 9 (X, 324). Patents—Defense of prior invention.

Approved in Drewson v. Hartje Paper etc. Co., 131 Fed. 739, 65 C. C. A. 548, statement, in printed copy of patent, of date of filing applica-

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tion, is prima facie evidence of such date, and date of invention presumed to be same.

105 U. S. 600-604, 26 L. 1184, NEW ORLEANS v. MORRIS.

Syl. 2 (X, 325). Execution on city waterworks.

Approved in Brockenbrough v. Board of Water Commrs., 134 N. C. 17, 46 S. E. 33, city waterworks transferred pursuant to Priv. Laws 1899, p. 788, c. 271, to commissioners, not subject to sale for city debt.

105 U. S. 605-611, 26 L. 1186, OGLESBY v. ATTRILL.

Syl. 1 (X, 325). Judicial question—Expediency of corporate action.

Distinguished in Kessler v. Ensley Co., 129 Fed. 409, court will not refuse to entertain suit by stockholders in behalf of corporation to redress fraud where it appears directors in refusing to bring suit acted from extraneous motives.

Syl. 3 (X, 326). Collateral attack on compromise.

Approved in Russ v. Union Oil Co., 113 La. 205, 36 So. 940, applying rule in personal injury case.

105 U. S. 611-613, 26 L. 1135, UNITED STATES v. CARLL.

Syl. 1 (X, 326). Indictment in statutory words.

Approved in Burton v. United States, 202 U. S. 373, 50 L. 1067, 26 Sup. Ct. 688, upholding indictment under Rev. St., § 1782, making it misdemeanor for senator to receive compensation for services before any department in matter in which government is interested; United States v. Allen, 150 Fed. 154, holding insufficient indictment under Rev. St., § 4046, merely averring defendant was clerk in money order office without averring money converted came into his hands by virtue of his employment; United States v. Meyers, 142 Fed. 908, holding insufficient indictment under Rev. St., § 5469, for robbing the mails; United States v. Fifty Waltham Watch Movements, 139 Fed. 301, forfeiting merchandise imported contrary to law; United States v. Green, 136 Fed. 643, holding insufficient under Rev. St., § 5451, indictment charging tendering check to federal officer with intent to influence decision; Miller v. United States, 136 Fed. 581, 69 C. C. A. 355, holding insufficient indictment under Rev. St., § 4746, for procuring presentation of false paper to pension commissioner, where it does not state manner of presentation or name of person procured to present it or that his name is unknown; Wong Din v. United States, 135 Fed. 704, 68 C. C. A. 340, upholding indictment for conspiracy to aid landing of Chinese in United States, in furtherance of which deputy sheriff in charge of Chinese was bribed; State v. Piper, 73 N. H. 228, 60 Atl. 743, holding insufficient indictment against bank official for making false entry.

Distinguished in McNeil v. United States, 150 Fed. 84, upholding sufficiency of indictment charging bankrupt unlawfully, knowingly, willfully and fraudulently concealed from trustee certain property belonging

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to bankrupt estate, as sufficiently alleging knowledge that property belonged to estate; State v. Hauser, 112 La. 343, 36 So. 407, upholding indictment for forgery though bill not alleged to have been published, knowing it to be false and counterfeited.

Syl. 3 (X, 327). Indictment—Uttering forged paper—Knowledge.

Approved in United States v. Green, 136 Fed. 651, holding insufficient indictment under Rev. St., § 5431, charging tendering of defendant's personal check to federal officer with intent to bribe.

105 U. S. 614-618, 26 L. 1189, LINCOLN v. FRENCH.

Syl. 1 (X, 328). Presumption of trustees' reconveyance.

See 100 Am. St. Rep. 104, note.

Syl. 2 (X, 328). Presumptions supply place of facts.

Approved in Wabash R. Co. v. De Tar, 141 Fed. 934, determining extent of presumption as to due care by traveler injured at railroad crossing.

105 U. S. 630-636, 26 L. 1194, THE POTOMAC.

Syl. 2 (X, 330). Collision—Use of vessel during repairs.

Approved in The Loch Trool, 150 Fed. 431, where vessel injured by collision on March 10th immediately laid up unrepaired, and on August 3d she obtained charter, but contract for repairs not made till October 17th, and during same period other vessels of owners laid up, libelant not entitled to damages for loss of use during repairs; The North Star, 140 Fed. 264, where it is shown vessel injured in collision would have obtained charter and made earnings during time she was detained for repairs, owner entitled to demurrage based on probable net earnings.

Syl. 4 (X, 330). Subrogation of insurer paying loss.

Approved in North German Fire Ins. Co. v. Adams, 142 Fed. 442, upholding admiralty jurisdiction over action in personam to enforce payment of fire policy on ship; The Livingstone, 130 Fed. 749, 65 C. C. A. 610, where ship sunk by collision and abandoned to insurer is insured by valued policy and stipulated sum paid to owner, who subsequently recovers actual value from vessel at fault, insurer is entitled to reimbursement from such sum to amount it has paid with interest.

(X, 329.) Miscellaneous. Cited in Standard etc. Ins. Co. v. Nome Beach Lighterage etc. Co., 133 Fed. 646, 67 C. C. A. 602, valuation in policy is conclusive of all rights under policy.

105 U. S. 647-658, 26 L. 1200, EX PARTE BOYD.

Syl. 1 (X, 331). Federal judgment—Supplementary proceedings.

Cited in In re Alphin etc. Cotton Co., 134 Fed. 480, arguendo.

Syl. 4 (X, 332). Where discovery compelled in equity.

Approved in United States v. Bitter Root etc. Co., 133 Fed. 280, 66 C. C. A. 652, denying federal equity jurisdiction of suit for discovery

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and for final relief which consists of enforcement of purely legal demand; Brown v. McDonald, 130 Fed. 969, refusing to entertain bill of discovery to ascertain names of stockholders of corporation against whom complainant desires to bring suit for collection of assessment.

105 U. S. 659-667, 26 L. 1136, CORBIN v. COUNTY OF BLACKHAWK.

Syl. 1 (X, 332). Federal suit by assignee.

Approved in Kolze v. Hoadley, 200 U. S. 83, 50 L. 380, 26 Sup. Ct. 220, applying rule to foreclosure of trust deed.

Syl. 2 (X, 332). Federal suit by assignee on contract.

Approved in Gorman-Wright Co. v. Wright, 134 Fed. 365, 67 C. C. A. 345, pledgee of stock cannot, on account of diversity of citizenship between himself and corporation, sue latter in federal court for appointment of receiver where pledgor is citizen of same state as corporation; Utah-Nevada Co. v. De Lamar, 133 Fed. 120, 121, 66 C. C. A. 179, suit by assignee of oral contract to recover money due thereon cannot be maintained in federal court unless assignor could sue therein.

105 U. S. 667-671, 26 L. 1204, POST v. KENDALL COUNTY.

Syl. 3 (X, 334). Following state decisions as to validity of statutes.

Distinguished in Great Southern etc. Hotel Co. v. Jones, 193 U. S. 546, 48 L. 786, 24 Sup. Ct. 576, independent judgment as to validity of mechanic's lien law under state constitution exercised by federal court, irrespective of state decisions rendered prior to commencement of suit but after rights of parties fixed by contract.

105 U. S. 671-691, 26 L. 1206, HARVEY v. UNITED STATES.

Syl. 3 (X, 335). Reformation of government contract.

Distinguished in United States v. Milliken Imprinting Co., 202 U. S. 175, 50 L. 983, 26 Sup. Ct. 572, refusing to reform government contract for printing revenue stamps by incorporating clauses in prior communication from internal revenue commissioner to contractors then engaged on work.

Syl. 4 (X, 335). Conclusiveness of findings.

Cited in United States v. Milliken Imprinting Co., 202 U. S. 174, 50 L. 983, 26 Sup. Ct. 572, arguendo.

105 U. S. 691-696, 26 L. 1108, SWIFT CO. v. UNITED STATES.

Syl. 2 (X, 335). Contemporaneous statutory construction.

Approved in Houghton v. Payne, 194 U. S. 100, 48 L. 891, 24 Sup. Ct. 590, books complete in themselves and published at stated intervals and in consecutive numbers are not entitled to second-class postal rates under Comp. St. 1901, p. 2646; Knight v. Shelton, 134 Fed. 434, determining legality of adoption of proposed amendment to Arkansas constitution.

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105 U. S. 696-701, 26 L. 1213, EX PARTE MASON.

Syl. 1 (X, 336). Habeas corpus—Order of court-martial.

Distinguished in United States v. Praeger, 149 Fed. 485, decision of court-martial that questions put to civilian witness are proper is not conclusive on civil courts on question of contempt in refusing to answer.

Syl. 3 (X, 336). Court-martial—Punishment.

Approved in In re Stubbs, 133 Fed. 1015, court-martial may sentence soldier convicted of violation sixty-second article of war to five years' imprisonment.

105 U. S. 701-703, 26 L. 1109, CRANE IRON CO. v. HOAGLAND.

Syl. 2 (X, 336). Writ of error as supersedeas—Service.

Approved in Kentucky v. Powers, 139 Fed. 490, upholding right of removal of criminal case where defendant discriminated against in selection of jury; Cresat v. Cresat, 54 W. Va. 584, 46 S. E. 584, date of decree as shown by record marks time from which statute of limitations governing appeal therefrom commences to run.

105 U. S. 709-718, 26 L. 1139, MARSH v. McPHERSON.

Syl. 2 (X, 337). Sales—Mitigation of damages—Acceptance of goods.

Approved in Thomas China Co. v. C. W. Raymond Co., 135 Fed. 28, 67 C. C. A. 629, where contract for sale of machinery contained general warranty of fitness for purpose intended, and there is further agreement to replace defective parts, where part of machine broke, purchaser could repair or replace same and recover cost thereof from seller under general warranty.

105 U. S. 728-733, 26 L. 957, COUNTY OF RALLS v. DOUGLASS.

Syl. 1 (X, 337). Bonds issued by de facto county.

Approved in Monahan v. Lynch, 2 Alaska, 134, upholding appointment of poundmaster by de facto councilmen.

Syl. 4 (X, 338). Bondholders' rights—Decisions at issuance.

Approved in Gamble v. Rural etc. School Dist., 146 Fed. 117, where, after issuance of negotiable school bond fraudulently issued and containing recitals entitling bona fide purchaser to recover full face value, statute passed limiting recovery on negotiable paper procured by fraud to amount paid thereof, such statute did not affect subsequent purchaser with knowledge of fraud from bona fide holder.

105 U. S. 733-739, 26 L. 1220, RALLS COUNTY COURT v. UNITED STATES.

Syl. 2 (X, 339). County bonds merged in judgment.

Approved in State v. Board of Commrs., 162 Ind. 597, 68 N. E. 301, where railroad's right to receive public aid previously voted and for which tax levied is determined by judgment, such matters are not attackable on mandamus; Ward v. Piper, 69 Kan. 776, 77 Pac. 700, fact that

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interest coupons on township bonds merged in judgment does not affect right of holder to have funds raised by taxation to pay interest on bonds applied to judgment; Atchison etc. R. R. Co. v. Territory, 11 N. M. 676, 72 Pac. 16, court may inquire into judgment against county to ascertain if claim legally payable out of taxes sought to be applied to it.

Syl. 3 (X, 339). County bonds—Authority to tax to redeem.

Approved in Rose v. McKie, 145 Fed. 590, 591, authority given town by statute to contract debt carries with it authority to tax for payment of such debt; City Council etc. of Denver v. Board Co. Commrs. Adams Co., 33 Colo. 7, 77 Pac. 860, city council, after service of alternative mandamus ordering it to levy tax for certain purpose, cannot defeat mandamus by making annual levy and omitting therefrom levy it was ordered to make.

Syl. 4 (X, 340). Debt limit—Special bond tax.

Approved in McKie v. Rose, 140 Fed. 148, where town authorized by statute to appropriate certain amount for construction of steamboat and issue notes therefor, it is no defense to mandamus to compel levy of tax to pay judgment recovered for portion of boat that town had issued notes to limit and used proceeds.

Syl. 5 (X, 340). Limiting taxing power—Contract obligations.

Approved in City of Ft. Madison v. Ft. Madison Water Co., 134 Fed. 216, 67 C. C. A. 142, Code Iowa 1897, § 1305, providing for assessment of property at quarter of actual value, is void in so far as it affects ability of city to meet prior contract for water rentals made when property required to be assessed at true cash value.

(X, 339.) Miscellaneous. Cited in School Dist. No. 1 v. School Dist. No. 7, 33 Colo. 51, 78 Pac. 692, as instance of grant of alternative mandamus commanding payment from moneys already raised or to levy tax to raise more.

105 U. S. 766-772, 26 L. 959, UNION PAPER BAG MACHINE CO. v. NIXON.

Syl. 4 (X, 342). No appeal as to costs alone.

Distinguished in Western Coal etc. Co. v. Petty, 132 Fed. 606, federal decree dismissing action at law and denying prevailing party his costs is reviewable on error; Nutter v. Brown, 58 W. Va. 240, 52 S. E. 90, 1 L. R. A. (N. S.) 1083, decree allowing expenses and compensation of receiver is appealable.

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106 U. S. 3-4, 27 L. 73, BOSTWICK v. BRINKERHOFF.

Syl. 1 (X, 343). Review—Judgment on merits only.

Approved in The Chief, 142 Fed. 351, order denying intervening petition under admiralty rule 43 not final; Heinze v. Butte etc. Min. Co., 129 Fed. 340, 64 C. C. A. 15, order approving receiver's reports and directing payment of expenses not final; Stahl v. Stahl, 220 Ill. 190, 77 N. E. 68, decree declaring conveyances fraudulent and referring to master for accounting is final.

106 U. S. 5-7, 27 L. 78, EX PARTE BALTIMORE & OHIO R. R.

Syl. 1 (X, 345). Jurisdiction—Joinder of decrees.

Approved in The Joseph B. Thomas, 148 Fed. 767, dismissing appeal as to several libelants in admiralty for wages; Feely v. Bryan, 55 W. Va. 593, 47 S. E. 311, rule applied where several creditors attack mortgage as preference.

106 U. S. 17-29, 27 L. 91, THE NORTH STAR.

Syl. 1 (X, 347). Both vessels in fault, each pays half.

Approved in Erie etc. Co. v. Erie R. Co., 142 Fed. 13, nonliability of one vessel to her cargo owners does not exonerate her from contribution to cargo liability of other; The C. R. Hoyt, 136 Fed. 677, holding rule should be applied independent of degree of fault.

Syl. 4 (X, 348). Admiralty—Related cases consolidated.

Approved in Erie etc. Co. v. Erie R. Co., 142 Fed. 14, holding damages should be apportioned in single adjudication; Betts v. United States, 132 Fed. 234, 65 C. C. A. 452, holding defendant tried on a number of indictments together is entitled to as many sets of peremptory challenges as indictments.

(X, 347.) Miscellaneous. Cited in Erie etc. Co. v. Erie R. Co., 142 Fed. 12, holding independent libel may be brought for contribution.

106 U. S. 30-38, 27 L. 65, PHOENIX INS. CO. v. DOSTER.

Syl. 1 (X, 348). Withdrawing case from jury.

Approved in Semet-Solway Co. v. Wilcox, 143 Fed. 840, in action for breach of contract of employment, question of servant's discharge rightly left to jury; International T. Book Co. v. Heartt, 136 Fed. 133, 69 C. C. A. 127, holding action for slander should have been taken from jury; Neeley v. Southwestern etc. Oil Co., 13 Okl. 362, 75 Pac. 539, 64 L. R. A. 145, holding, in action for personal injuries, questions of negligence and contributory negligence improperly withdrawn from jury; Woolf v.

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Washington etc. Nav. Co., 37 Wash. 503, 79 Pac. 999, reversing verdict of jury and holding one killed in crossing railroad tracks guilty of contributory negligence.

Syl. 2 (X, 349). Waiver—Customarily receiving overdue premiums.

Approved in Rutherford v. Prudential Ins. Co., 34 Ind. App. 540, 73 N. E. 205, holding no forfeiture where agent failed to call for premium; Aetna Life Ins. Co. v. Fallow, 110 Tenn. 729, 77 S. W. 930, rule applied where accident insurance premium was paid after accident. See notes, 107 Am. St. Rep. 106; 107 Am. St. Rep. 145.

Syl. 3 (X, 350). Courts liberal to avoid forfeitures.

Approved in Washburn v. Union etc. Ins. Co., 143 Ala. 489, 38 So. 1012, retention of overdue premium note and insistence on payment held waiver.

Syl. 4 (X, 350). Insurance—Notice—Time to pay premium.

Distinguished in Leonhard v. Provident etc. Soc., 130 Fed. 291, 64 C. C. A. 533, holding giving of notice useless where policy was surrendered.

106 U. S. 47-85, 27 L. 47, CHICAGO ETC. R. R. v. FOSDICK.

Syl. 8 (X, 353). Mortgage—Request must precede foreclosure.

Approved in Cochran v. Pittsburg etc. R. Co., 150 Fed. 682, reaffirming rule.

(X, 351.) Miscellaneous. Cited in Hill v. Denton, 74 Ark. 466, 86 S. W. 404, sale under foreclosure decree devests trustor of all interest.

106 U. S. 89-95, 27 L. 79, COTTON-TIE CO. v. SIMMONS.

Syl. 1 (X, 355). Patents—Using old parts.

Approved in National Cash Reg. Co. v. Grobet, 148 Fed. 387, holding adding patented printing devise to cash register no infringement; Wagner Typewriter Co. v. Webster Co., 144 Fed. 411, holding replacing typewriter spool not reconstruction and no infringement; Morrin v. Robert etc. Works, 138 Fed. 76, refitting tubes in steam generator held reconstruction and infringement.

Syl. 2 (X, 355). Patented parts may be replaced.

Approved in Wagner Typewriter Co. v. Webster Co., 144 Fed. 412, holding typewriter ribbon and spool may be replaced.

Syl. 3 (X, 356). Contributory infringement—Vendor.

Approved in Cortelyou v. Chas. Enen Johnson & Co., 138 Fed. 117, holding notice on rotary neostyle of restrictive use binds purchaser.

106 U. S. 99-108, 27 L. 69, BACON v. RIVES.

Syl. 1 (X, 356). Nominal party does not prevent removal.

Approved in Cella v. Brown, 136 Fed. 442, reaffirming rule; Boatmen's Bank v. Fritzlen, 135 Fed. 658, 68 C. C. A. 288, rule applied holding prior mortgagee not necessary party to suit to foreclose junior mort-

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gage; Groel v. United Elec. Co., 132 Fed. 254, in action by stockholder on behalf of corporation, corporation is necessary party.

Syl. 3 (X, 357). Statute runs against disavowed trusts.

Approved in Patterson v. Hewitt, 11 N. M. 42, 66 Pac. 565, 55 L. R. A. 670, rule applied to verbal promise to share profits of mining claims.

(X, 356.) Miscellaneous. Cited in Murray v. Farrell, 2 Alaska, 363, law of forum governs unless statute provides otherwise.

106 U. S. 118-123, 27 L. 87, STEAMSHIP CO. v. TUGMAN.

Syl. 1 (X, 358). Jurisdiction—Residence of corporation.

Approved in Thomas v. Board of Trustees, 195 U. S. 210, 49 L. 164, 25 Sup. Ct. 24, holding board of university trustees created by special legislative act not a corporation.

Syl. 3 (X, 359). Filing petition and bond removal complete.

Approved in Boatmen's Bank v. Fritzlen, 135 Fed. 653, 68 C. C. A. 288, reaffirming rule; Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 245, 49 L. 464, 25 Sup. Ct. 251, eminent domain action under state statute is removable; Chicago etc. Ry. Co. v. Stone, 70 Kan. 709, 79 Pac. 655, amended petition demanding less than $2,000 does not prevent removal.

Distinguished in Corporation Commission v. Railroad Co., 135 N. C. 81, 47 S. E. 232, holding pleading does not show statutory amount.

Syl. 4 (X, 361). Removal—Compelled defense no waiver.

Approved in Illinois etc. R. R. Co. v. Whitworth, 115 Ky. 292, 73 S. W. 768, holding pleading under protest no waiver.

106 U. S. 124-141, 27 L. 104, PRITCHARD v. NORTON.

Syl. 3 (X, 361). Law incorporated in contract controls.

Approved in Supreme Lodge, Knights of Pythias v. Meyer, 198 U. S. 517, 49 L. 1149, 25 Sup. Ct. 754, Dowagie Mfg. Co. v. Lochren, 143 Fed. 216, and Perry v. Rubber Tire Wheel Co., 138 Fed. 837, all holding lex fori governs right to compel witness to answer; Anglo-American etc. Co. v. Wood, 143 Fed. 684, as to what actions against stockholders may be united, lex fori controls; Midland etc. Co. v. Solomon, 71 Kan. 187, 79 Pac. 1078, applying rule to express stipulation that bond be governed by law of another state; Creston Nat. Bank v. Salmon, 117 Mo. App. 513, 93 S. W. 289, allowing equitable defenses to promissory note after negotiation, lex loci contractus controls; Seely v. Manhattan etc. Ins. Co., 72 N. H. 56, 55 Atl. 427, lex fori controls admissibility of affidavit of mailing notice of insurance premiums unpaid; Clark v. Eltinge, 38 Wash. 382, 383, 107 Am. St. Rep. 858, 80 Pac. 559, applying rule to statutory exemptions of wife.

Syl. 4 (X, 363). Right of action is property.

Approved in Merchants' Nat. Bank v. East Grand Forks, 94 Minn. 250, 102 N. W. 704, upholding act of legislature curing defects in con-

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tracts for street work; Kingsley v. Merrill, 122 Wis. 192, 99 N. W. 1046, 67 L. R. A. 203, holding mortgages and notes of solvent debtor's taxable property.

Syl. 7 (X, 364). Construction—Law upholding contract.

Approved in Home Land etc. Co. v. McNamara, 145 Fed. 19, that one jurisdiction upholds provision for liquidated damages not enough to control; Davis v. Tandy, 107 Mo. App. 448, 81 S. W. 460, applying rule to note usurious under laws of one state.

(X, 361.) Miscellaneous. Cited in United States v. Milwaukee etc. Co., 145 Fed. 1007, question whether assignee can sue in his own name cannot be raised by plea in bar after trial.

106 U. S. 142-147, 27 L. 110, WING v. ANTHONY.

Syl. 1 (X, 364). Patent—Reissue differing from original.

Approved in Cleveland etc. Co. v. Detroit etc. Co., 131 Fed. 744, where original application for gas-burner is for mechanism only, subsequent process claim void.

106 U. S. 147-154, 27 L. 85, JESSUP v. UNITED STATES.

Syl. 3 (X, 364). Validity of bond not required by statute.

Approved in Commissioners of Logan Co. v. Harvey, 6 Okl. 632, 52 Pac. 403, bond of register of deeds, not required by statute, is void where extorted.

106 U. S. 154-160, 27 L. 149, THE NEVADA.

Syl. 4 (X, 365). Negligence—Ocean steamer.

Approved in Quinette v. Bisso, 136 Fed. 832, 69 C. C. A. 825, steam tug traversing thickly settled river in a fog must slow down.

Syl. 5 (X, 365). Collision—Insufficient lookout.

Approved in New York & Oriental etc. Co. v. New York etc. Co., 143 Fed. 994, holding if duty of one lookout compelled him to watch piers, there should have been another.

(X, 365.) Miscellaneous. Cited in The North Star, 132 Fed. 147, to effect that suction may cause collision.

106 U. S. 160-162, 26 L. 128, UNITED STATES v. ABATOIR PLACE.

Syl. 1 (X, 366). Review—Seizure—Certificate reasonable cause.

Approved in United States v. 83 Sacks of Wood, 147 Fed. 749, district court should not grant certificate unless clearly warranted by evidence; Agnew v. Haymes, 141 Fed. 637, holding Rev. St., § 970, not in conflict with Rev. St., § 989; Anglo-American etc. Co. v. Cheshire Prov. Inst., 134 Fed. 155, revoking order staying execution because possibly not reviewable.

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106 U. S. 163-166, 26 L. 129, MASON v. NORTHWESTERN INS. CO.

Syl. 1 (X, 366). Mortgages—Equity of redemption.

Approved in Logan Co. v. McKinley etc. Trust Co., 70 Neb. 414, 101 N. W. 993, right to redemption exists from judicial tax sale.

106 U. S. 166-178, 27 L. 134, CLOUGH v. BARKER.

Syl. 1 (X, 366). Patents—Oil-burners.

Approved in Cleveland Foundry Co. v. Kauffman, 135 Fed. 362, 68 C. C. A. 658, upholding Jeavous oil-burner as employing new method of dislodgment.

Syl. 2 (X, 366). Patents—Accidental anticipation.

Approved in United Shirt & Collar Co. v. Beattie, 149 Fed. 740, upholding patent for successful machine for folding cuff edges in spite of prior unsuccessful machine; Chisholm v. Fleming, 133 Fed. 930, applying rule to machine for hulling peas on the vines; Pettibone v. Pennsylvania Steel Co., 133 Fed. 738, applying rule to patent for railroad switch-stand.

Distinguished in American Sales Book Co. v. Carter-Crume Co., 150 Fed. 336, Beck patent No. 647,934, for manifolding salesbook and holder, was anticipated.

106 U. S. 183-187, 27 L. 90, SCHOOL DISTRICT v. STONE.

Syl. 2 (X, 368). Municipalities—Estoppel to contest bonds.

Approved in Platt v. Hitchcock Co., 139 Fed. 933, applying rule to precinct bonds issued by board of county commissioners in Nebraska.

Syl. 3 (X, 368). Municipalities—Estoppel—Express recital.

Approved in Green Co. v. Shortell, 116 Ky. 126, 75 S. W. 254, applying rule to bonds issued by county in subscription to railroad stock containing no recitals of preliminary requisites; Graves v. Commissioners, 135 N. C. 56, 47 S. E. 136, applying rule to township bonds in aid of railroad containing no recitals of regularity.

106 U. S. 188-190, 27 L. 156, SCHWED v. SMITH.

Syl. 1 (X, 369). Appeal—Jurisdictional amount—Separate claims.

Approved in Feely v. Bryan, 55 W. Va. 591, 595, 47 S. E. 310, 312, applying rule to several creditors attacking a mortgage as a preference.

106 U. S. 191-195, 27 L. 131, FRASER v. JEMISON.

Syl. 2 (X, 370). Removal of causes—Separate controversy.

Approved in Perkins v. Lake Superior etc. Ry. Co., 140 Fed. 910, in railroad condemnation proceedings, diverse citizenship of owner of one piece of land no ground for removal; Boatmen's Bank v. Fritzlen, 135 Fed. 663, 68 C. C. A. 288, action to avoid prior mortgages

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for fraud and action to foreclose junior mortgage separable; Groel v. United States, 132 Fed. 254, in suit in equity by stockholder of New Jersey corporation, corporation should be classed as a defendant and removal refused; Laden v. Meck, 130 Fed. 879, 65 C. C. A. 361, in action for specific performance of contract of sale of land the allegation of diverse citizenship insufficient.

106 U. S. 196-251, 27 L. 171, UNITED STATES v. LEE.

Syl. 4 (X, 371). Useless tender unnecessary.

Approved in Memphis City Bank v. Smith, 110 Tenn. 355, 75 S. W. 1070, refusal by bank to surrender pledged property except on payment of other unsecured debts waives necessity for tender.

Syl. 7 (X, 372). Sovereignty not suable without consent.

Approved in State v. Mortensen, 69 Neb. 385, 95 N. W. 834, denying mandamus to compel state board of public buildings to perform contract for hiring convict labor. See 108 Am. St. Rep. 832, note.

Syl. 9 (X, 374). Ejectment against federal officer.

Approved in Burton v. United States, 202 U. S. 368, 50 L. 1066, 26 Sup. Ct. 688, upholding enactment making it a misdemeanor for United States senator to receive compensation; Wadsworth v. Boysen, 148 Fed. 780, applying rule to injunction against Indian agent from obstructing prospector on reservation; Rosenberger v. Harris, 130 Fed. 1003, granting injunction pendente lite restraining "fraud order" of postoffice department classing advertising scheme as a lottery; O'Reilly De Camara v. Brooke, 135 Fed. 388, holding military governor of Cuba not exempt from liability for tort committed under his civil administration; Kirk v. United States, 131 Fed. 339, action to enjoin United States and marshal from unlawful seizure, dismissed as to United States, granted as to marshal; dissenting opinion in International Postal Supply Co. v. Bruce, 194 U. S. 608, 612, 48 L. 1138, 1140, 24 Sup. Ct. 820, majority holding postmaster cannot be enjoined from using patented stamp-canceling machine. See 108 Am. St. Rep. 835, 839, notes.

Distinguished in International Postal Supply Co. v. Bruce, 194 U. S. 605, 48 L. 1137, 24 Sup. Ct. 820, holding United States postmaster cannot be enjoined from using patented stamp-canceling machines; Sanders v. Saxton, 182 N. Y. 479, 481, 108 Am. St. Rep. 826, 75 N. E. 529, 530, in suit against officer to cancel tax deed and quiet title against state, the state held real party in interest and rights to sue denied.

Syl. 10 (X, 374). Government not bound by suit against officer.

Approved in Sanders v. Saxton, 182 N. Y. 480, 108 Am. St. Rep. 826, 75 N. E. 530, suit against officer to cancel tax deed is suit against state.

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(X, 371.) Miscellaneous. Cited in Northern Securities Co. v. United States, 193 U. S. 350, 48 L. 706, 24 Sup. Ct. 436, upholding power of Congress to regulate interstate commerce.

106 U. S. 252-255, 27 L. 145, RICHARDSON v. HARDWICK.

Syl. 1 (X, 375). Parol evidence to vary writing.

Approved in Farnham Co. v. Southeastern Const. Co., 144 Fed. 990, parol agreement to transfer stock in consideration of promises contained in written contract held inadmissible; Standiford v. Thompson, 135 Fed. 998, 68 C. C. A. 425, construing instrument as option to purchase coal lands and refusing to decree specific performance; Lillard v. Kentucky Distilleries etc. Co., 134 Fed. 182, 67 C. C. A. 74, cited in opinion of court below, reversed, court above holding evidence of usage and custom admissible.

Syl. 2 (X, 375). Option vests no present estate.

Approved in Phenix Ins. Co. v. Kerr, 129 Fed. 727, 64 C. C. A. 251, 66 L. R. A. 569, option gives sole and unconditional owner within meaning of fire insurance policy; Sheehy v. Scott, 128 Iowa, 556, 104 N. W. 1141, holding interest of vendor subject to attachment prior to execution of deed.

Syl. 3 (X, 375). Option, when binding—Consideration.

Approved in Kirby-Carpenter Co. v. Burnett, 144 Fed. 637, option to purchase land, without consideration, unenforceable.

106 U. S. 260-264, 27 L. 147, WALLACE v. PENFIELD.

Syl. 1 (X, 376). Gift to wife not fraudulent.

Approved in Savage v. Savage, 141 Fed. 350, gift to wife made while solvent good against subsequent creditors in bankruptcy.

106 U. S. 265-271, 27 L. 115, FARMERS' LOAN & TRUST CO. v. WATERMAN.

Syl. 2 (X, 377). Appeal—Jurisdictional amount—Joinder.

Approved in Feily v. Bryan, 55 W. Va. 592, 47 S. E. 310, applying rule to several creditors attacking mortgage as a preference.

106 U. S. 272-285, 27 L. 196, FINK v. O'NEIL.

Syl. 1 (X, 378). Government bound by homestead exemption.

Approved in dissenting opinion in State v. Marsh, 134 N. C. 192, 47 S. E. 9, 67 L. R. A. 179, majority holding state can correct fatally defective indictment after close of term. See 101 Am. St. Rep. 151, 182, notes.

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106 U. S. 286-314, 27 L. 117, MILTENBERGER v. LOGANSPORT RY.

Syl. 6 (X, 380). Railroads—Preserving expenses precede mortgage.

Approved in In re Erie Lumber Co., 150 Fed. 828, applying rule and granting priority to receiver's certificates for operating expenses of sawmill; Cunningham v. Zinc etc. Min. Co., 103 Mo. App. 400, 76 S. W. 488, holding labor claims entitled to priority in receivership of mining corporation; People's Nat. Bank v. Virginia etc. Co., 104 Va. 37, 51 S. E. 156, applying rule and allowing priority to operating expenses of receiver of textile factory; dissenting opinion in Gregg v. Metropolitan Trust Co., 197 U. S. 192, 193, 195, 196, 49 L. 720, 721, 25 Sup. Ct. 415, majority holding supplies for preservation of road but not necessary for business have no priority.

Distinguished in Gregg v. Metropolitan Trust Co., 197 U. S. 187, 49 L. 718, 25 Sup. Ct. 415, holding supplies for preservation but not necessary for business of road have no priority; Security Trust Co. v. Goble R. Co., 44 Or. 374, 74 Pac. 921, holding services and supplies not furnished in furtherance of railroad business.

106 U. S. 327-337, 27 L. 151, UNITED STATES v. ERIE RY. CO.

Syl. 1 (X, 383). Assessment of foreign bondholders.

Approved in Metropolitan Life Ins. Co. v. Board of Assessors, 115 La. 706, 39 So. 849, holding Act No. 170 of 1898, making bills receivable due nonresidents assessable, is not unconstitutional.

106 U. S. 350-360, 27 L. 222, ST. CLAIR v. COX.

Syl. 2 (X, 386). Process—Agent of foreign corporation.

Approved in Kibbler v. St. Louis etc. R. Co., 147 Fed. 881, denying jurisdiction over foreign corporation not having agent within judicial district; Cella Com. Co. v. Bohlinger, 147 Fed. 422, holding service of summons on state auditor for foreign corporation not due process of law; Wilson v. American Palace Car Co., 65 N. J. Eq. 734, 55 Atl. 998, holding court without jurisdiction over foreign corporation not personally served.

Syl. 3 (X, 386). Foreign corporations—Reasonable restrictions.

Approved in Old Wayne etc. Assn. v. McDonough, 164 Ind. 328, 73 N. E. 705, upholding statute requiring foreign insurance corporation to stipulate that service may be made on commissioner; Bruning v. Brotherhood Acc. Co., 191 Mass. 116, 77 N. E. 711, upholding statute permitting service on foreign insurance corporation to be made upon state auditor; Groel v. United Elec. Co., 69 N. J. Eq. 411, 412, 60 Atl. 827, upholding jurisdiction over foreign corporation on service on its process agent; Hunter v. Mutual Reserve etc. Ins. Co., 184 N. Y. 144, 76 N. E. 1074, holding statutory power of attorney to

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insurance commissioner irrevocable only while foreign corporation continues doing business; dissenting opinion in Security etc. Ins. Co. v. Prewitt, 202 U. S. 261, 50 L. 1020, 26 Sup. Ct. 619, majority holding state may revoke license of foreign insurance company for removing cause to federal court.

Syl. 5 (X, 387). Process—Agent of foreign corporation.

Approved in Pennsylvania etc. Ins. Co. v. Meyer, 197 U. S. 413, 49 L. 814, 25 Sup. Ct. 483, foreign insurance company sending loss adjusters into state is "doing business" there; Kibbler v. St. Louis etc. R. Co., 147 Fed. 882, holding foreign corporation not suable in federal court where county of resident agent is in another district; Buffalo Glass Co. v. Manufacturers' Glass Co., 142 Fed. 274, vacating process on foreign corporation without place of business where served on president temporarily within state; Buffalo etc. Brick Co. v. American etc. Mach. Co., 141 Fed. 212, setting aside service and summons on foreign corporation not doing business in state made on president temporarily within state; Johnson v. Computing Scale Co., 139 Fed. 340, service on officer of foreign corporation casually within state void; Brush Creek etc. Co. v. Morgan G. etc. Co., 136 Fed. 506, 507, service on officer of foreign corporation within state to adjust difference with plaintiff is good; Wells v. Clark, 136 Fed. 465, holding rightful jurisdiction of state court cannot be lost by removal to federal court; Jameson v. Simonds Saw Co., 2 Cal. App. 585, 84 Pac. 290, single transaction is not "doing business" so as to authorize service on foreign corporation; Reeves v. Southern Ry. Co., 121 Ga. 565, 49 S. E. 676, following rule and holding immaterial whether action originated without state; Williams v. Metropolitan etc. Ry. Co., 68 Kan. 21, 74 Pac. 602, 64 L. R. A. 794, foreign corporation is "out of the state" and cannot avail itself of statute of limitations; Zelnicker Supply Co. v. Cotton Oil Co., 103 Mo. App. 97, 77 S. W. 322, holding service void on president of foreign corporation not doing business in state; Territory v. Baker, 12 N. M. 459, 78 Pac. 625, denying jurisdiction over foreign corporation not doing business in state on service on president while passing on train; Berger v. Pennsylvania R. R. Co., 27 R. I. 585, 65 Atl. 262, solicitation of business by agents of foreign corporation is not "doing business" within the state.

Distinguished in Groel v. United Elec. Co., 69 N. J. Eq. 422, 60 Atl. 831, upholding P. L. 1896, p. 307, relating to appointment of process agent by foreign corporation.

Syl. 6 (X, 389). Foreign corporations—Record of service.

Approved in Jackson v. Delaware etc. Co., 131 Fed. 134, holding marshal's return insufficient which does not show corporation was doing business in state; Scott v. Stockholders Oil Co., 129 Fed. 617, principal case referred to as stating rule as to what must appear on record; Hilbebrand v. United Artisans, 46 Or. 139, 79 Pac. 349,

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holding record of service on foreign corporation insufficient where complaint fails to show where action accrued; In re Box's Will, 127 Wis. 270, 106 N. W. 1065, denying jurisdiction to admit foreign will to probate where record of original probate deficient.

106 U. S. 360-370, 27 L. 201, VAN WYCK v. KNEVALS.

Syl. 2 (X, 390). Railroad grant prevents state grant.

Approved in Knepper v. Sands, 194 U. S. 481, 48 L. 1084, 24 Sup. Ct. 744, holding title in state as trustee until it disposes of land; Cascaden v. Dunbar, 2 Alaska, 412, locator of mining claim gains present title which can be defeated only by subsequent failure to comply with statute.

Syl. 3 (X, 390). Filing definite location fixes route.

Approved in Eastern Or. L. Co. v. Brosnan, 147 Fed. 812, applying rule to military wagon road.

106 U. S. 371-379, 27 L. 232, EX PARTE CURTIS.

Syl. 2 (X, 393). Congress may prohibit political donations.

Approved in Fox v. Willis, 114 Ky. 947, 72 S. W. 332, minister to foreign country cannot collect fee for services in prosecuting claims against government.

Syl. 4 (X, 393). Habeas corpus—What reviewable.

Approved in Cuyler v. Atlantic etc. R. Co., 131 Fed. 99, discharging defendant on habeas corpus where judgment of contempt exceeded jurisdiction of court.

106 U. S. 379-390, 27 L. 157, GEEKIE v. KIRBY CARPENTER CO.

Syl. 2 (X, 393). Tax deed—Statutory limitations.

Approved in Simoneaux v. White Castle Lumber etc. Co., 112 La. 224, 36 So. 329, lapse of statutory period cures failure of tax collector to offer part before whole.

106 U. S. 391-395, 27 L. 219, LANSDALE v. SMITH.

Syl. 1 (X, 394). Equity refuses relief for laches.

Approved in Thurmond v. Chesapeake etc. Ry. Co., 140 Fed. 699, sustaining demurrer to bill to enforce specific performance for laches; Cole v. Birmingham Union Ry. Co., 143 Ala. 434, 39 So. 405, holding stockholder's suit to set aside ultra vires transfer barred by laches; Patterson v. Hewitt, 11 N. M. 23, 42, 66 Pac. 558, 654, 55 L. R. A. 658, holding action to enforce trust in mine barred by laches.

106 U. S. 395-399, 27 L. 60, KING v. CORNELL.

Syl. 1 (X, 396). Statute—Repeal by implication.

Approved in Pratt Institute v. City of New York, 183 N. Y. 157, 75 N. E. 1121, holding general tax law exempting educational institutions repeals special exempting act.

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Syl. 2 (X, 397). Removal of causes—Alien defendants.

Approved in O'Conor v. Texas, 202 U. S. 507, 50 L. 1126, 26 Sup. Ct. 726, reaffirming rule; Iowa etc. Min. Co. v. Bliss, 144 Fed. 457, holding action against guaranty company separable from action against principal and removable; Laden v. Meck, 130 Fed. 879, 65 C. C. A. 361, petition for removal must show that each party is citizen of some state.

106 U. S. 399-408, 27 L. 245, HEMINGWAY v. STANSELL.

Syl. 1 (X, 398). Action—Change in municipal officers.

Approved in State v. Woodruff, 83 Miss. 114, 36 So. 80, holding under Laws 1876, p. 174, auditor and treasurer can be sued as successors of levee commissioners.

106 U. S. 408-413, 27 L. 169, HODGES v. EASTON.

Syl. 3 (X, 399). Waiver of jury not presumed.

Approved in Swift & Co. v. Jones, 145 Fed. 492, holding circuit court had no power to refer issues of fact in case at common law to master; Allen v. Parmalee, 142 Fed. 363, reversing directed verdict in trespass to try title and remanding to jury; Chessman v. Hale, 31 Mont. 591, 79 Pac. 258, holding right to jury not waived in action for damages and injunction.

106 U. S. 429-432, 27 L. 237, GRANT v. PHOENIX INS. CO.

Syl. 1 (X, 400). Appeal—What is final decree.

Approved in Norris Safe & Lock Co. v. Manganese etc. Co., 150 Fed. 578, order requiring payment of money into court not final; Stahl v. Stahl, 220 Ill. 190, 77 N. E. 68, holding decree that certain conveyances absolute in form are in trust and referring to master for accounting is final.

106 U. S. 432-437, 27 L. 230, WOODENWARE CO. v. UNITED STATES.

Syl. 1 (X, 401). Damages for removal of timber.

Approved in United States v. Coughanour, 133 Fed. 225, 66 C. C. A. 278, reaffirming rule; United States v. Bitter Root etc. Co., 133 Fed. 278, 66 C. C. A. 652, sustaining demurrer to bill in equity for damages for removing timber, remedy existing at law; Trustees Dartmouth Col. v. International etc. Co., 132 Fed. 95, 106, holding, where trespass not willful, measure of damages is stumpage value at time of cutting; Anderson v. Besser, 131 Mich. 486, 91 N. W. 739, and Texas etc. Ry. Co. v. Jones, 34 Tex. Civ. 95, 77 S. W. 956, both applying rule for measure of damage where timber cut by trespasser in good faith; Peyton v. Desmond, 129 Fed. 7, 63 C. C. A. 651, arguendo.

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106 U. S. 437-445, 27 L. 208, MINTURN v. UNITED STATES.

Syl. 2 (X, 403). Negligence—Officers of government.

Approved in United States v. Guest, 143 Fed. 458, surety on distiller's bond not relieved from tax on lost spirits though loss caused by negligence of collector.

106 U. S. 447-457, 27 L. 226, STEEL v. SMELTING CO.

Syl. 3 (X, 404). Land patent—Collateral attack.

Approved in Brown v. Gurney, 201 U. S. 193, 50 L. 722, 26 Sup. Ct. 509, rulings of Land Department on lode mining claim not subject to collateral attack after final entry; Le Marchel v. Teegarden, 133 Fed. 827, holding one seeking to attack patents must plead and prove evidence from which mistake resulted; Peyton v. Desmond, 129 Fed. 9, 63 C. C. A. 651, proceedings leading to patent cannot be reviewed; Gurney v. Brown, 32 Colo. 480, 77 Pac. 359, judgment of Land Department on adverse claims to mining location cannot be collaterally attacked; Quinn v. Baldwin Star Coal Co., 19 Colo. App. 506, 76 Pac. 555, decision of Interior Department canceling entry on coal land and permitting amendment of entry not subject to collateral attack; Adams v. Couch, 1 Okl. 40, 26 Pac. 1017, action of Land Department on homestead settlement not reviewable on action of ejectment; Paine v. Foster, 9 Okl. 230, 53 Pac. 114, findings of land officers on controverted questions of fact conclusive; Board of Education v. Mansfield, 17 S. D. 78, 81, 82, 106 Am. St. Rep. 771, 95 N. W. 288, 289, townsite patent issued by land office cannot be collaterally attacked by locators of mining claims; Welsh v. Callvert, 34 Wash. 255, 75 Pac. 873, refusing to entertain claim by applicant that lands granted as tide lands were oyster lands as collateral attack; Laramie Nat. Bank v. Steinhoff, 11 Wyo. 308, 71 Pac. 994, prior to issuance of patent court may determine right to possession but not title.

Syl. 6 (X, 407). Land patent passes legal title.

Approved in Bockfinger v. Foster, 10 Okl. 502, 62 Pac. 803, holding townsite trustees who have not conveyed title by deed cannot be declared by court of equity to hold as trustees for claimant.

Syl. 7 (X, 407). Patent—Attack for fraud.

Approved in Oklahoma City v. Hill Bros., 6 Okl. 125, 50 Pac. 245, holding unauthorized deed by townsite trustees void in action to recover damages for ejectment; Keyes v. Brackett, 187 Mass. 308, 72 N. E. 987, granting equitable relief for fraud practiced in bonding against mechanic's lien.

Syl. 10 (X, 409). Improvements—Estoppel—Knowledge.

Approved in Lydick v. Gill, 68 Neb. 281, 94 N. W. 112, holding estoppel to assert title though party acting without intent to deceive.

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106 U. S. 458-464, 27 L. 216, GEORGIA v. JESUP.

Syl. 1 (X, 409). Conflict of laws—Taxes.

Approved in Ingraham v. National Salt Co., 139 Fed. 689, refusing to enjoin on behalf of attaching creditor in federal court receiver under state insolvency statute.

106 U. S. 464, 465, 27 L. 302, CLARK v. KEITH.

Syl. 1 (X, 410). Appeal—Law of the case.

Approved in United States v. Denver etc. R. R. Co., 11 N. M. 154, 66 Pac. 552, holding previous decision that acts of Congress constituted grant to party to suit precludes inquiry into validity of act.

106 U. S. 466, 467, 27 L. 267, MORRILL v. JONES.

Syl. 1 (X, 411). Department regulations cannot alter law.

Approved in United States v. Matthews, 146 Fed. 308, holding statute declaring it crime to violate regulation of Department of Interior void; Powell v. United States, 135 Fed. 882, upholding regulations of Internal Revenue Department governing claims for rebate; United States v. Hoover, 133 Fed. 952, holding Secretary of Agriculture without power to make rules governing transportation of animals with infectious diseases, violation of which would constitute crime.

Distinguished in Stratton v. Oceanic Steamship Co., 140 Fed. 834, holding department regulation requiring deposit of head tax on landing of alien valid; Borden v. United States, 132 Fed. 206, upholding customs regulation requiring registry of pedigree of animals imported for breeding purposes.

106 U. S. 468-487, 27 L. 279, BRANCH v. JESUP.

Syl. 3 (X, 412). Railroad—Sale of franchise.

Approved in City of Lincoln v. Lincoln St. R. Co., 67 Neb. 480, 93 N. W. 769, holding corporation organized to construct street railway may purchase one already constructed. See notes, 99 Am. St. Rep. 257; 103 Am. St. Rep. 560.

Syl. 4 (X, 412). Estoppel—Receiving dividend.

Approved in Weed v. Gainesville R. R. Co., 119 Ga. 596, 46 S. E. 894, bondholders could not attack contract as ultra vires or in restraint of trade; Breslin v. Fries-Breslin Co., 70 N. J. L. 283, 58 Atl. 317, holding consenting stockholder precluded from setting up irregularity in declaring dividend.

106 U. S. 487-504, 27 L. 238, PARKERSBURG v. BROWN.

Syl. 1 (X, 413). Equity—Adequate remedy at law.

Approved in General Elec. Co. v. Westinghouse Elec. & Mfg. Co., 144 Fed. 466, refusing injunction restraining violation of contract for manufacture and sale of electrical appliances.

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Distinguished in Southern Pac. R. Co. v. United States, 133 Fed. 657, 66 C. C. A. 581, upholding equity jurisdiction over suit by United States against railroad and its mortgagees to determine title to land erroneously patented.

Syl. 2 (X, 413). Municipalities—Expenditure for public purpose.

Approved in Castner v. City of Minneapolis, 92 Minn. 87, 99 N. W. 361, holding reimbursement of defeated candidate for expenses of election contest illegal.

Syl. 3 (X, 414). Municipal corporations—Ultra vires bonds.

Approved in In re Waterloo Organ Co., 134 Fed. 344, 67 C. C. A. 255, holding ultra vires bonds not allowable claims on bankruptcy court; In re Waterloo Organ Co., 134 Fed. 348, 67 C. C. A. 327, holding bank having advanced money on pledged bonds could prove claim in bankruptcy.

Syl. 4 (X, 414). Unauthorized bonds—Repayment of money.

Approved in Chelsea Sav. Bank v. City of Ironwood, 130 Fed. 412, 413, 66 C. C. A. 230, where illegal bonds assigned, assignee could recover from city; People's Bank v. Dalton, 2 Okl. 483, 37 Pac. 809, unholding statute providing for recovery of usurious interest; Luther v. Wheeler, 73 S. C. 95, 52 S. E. 878, though note of city invalid, holder may recover on quantum meruit for municipal building erected.

106 U. S. 505-519, 27 L. 139, CLARKSON v. STEVENS.

Syl. 2 (X, 415). Contract for vessel—When title passes.

Distinguished in In re McDonald, 138 Fed. 466, determining title to uncompleted vessels in shipyards at time of bankruptcy, as between trustee and persons for whom built.

106 U. S. 519-521, 27 L. 265, PATTERSON v. LYNDE.

Syl. 3 (X, 416). Creditor's remedy on unpaid subscriptions.

Approved in Harrison v. Remington Paper Co., 140 Fed. 388, provision of Kansas constitution governing stockholder's liability in absence of statute enforceable by suit in equity for benefit of all creditors; Rawson v. Taylor, 69 Neb. 486, 95 N. W. 1037, holding action can be maintained by beneficiary under bond given to secure return of assets of insolvent corporation; Macbeth v. Banfield, 45 Or. 564, 106 Am. St. Rep. 670, 78 Pac. 696, value of property for which directors issued stock as fully paid up may be inquired into by creditors; Hazlett v. Woodhead, 27 R. I. 512, 63 Atl. 954, holding declaration on stockholder's liability bad for failure to include nonresident stockholders.

106 U. S. 523-525, 27 L. 268, YOUNGSTOWN BANK v. HUGHES.

Syl. 1 (X, 417). Appeal—Amount must be money.

Approved in Scheurich v. Southwest etc. Light Co., 183 Mo. 499, 81 S. W. 1227, denying jurisdiction over appeal from order denying injunction abating a dam.

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106 U. S. 525-532, 27 L. 163, UNITED STATES v. STONE.

Syl. 2 (X, 418). Evidence—Treasury transcript.

Approved in United States v. Pierson, 145 Fed. 817, admitting treasury transcript certified by register of treasury in action on bond of Indian agent; United States v. McCoy, 193 U. S. 599, 48 L. 808, 24 Sup. Ct. 528, certified account from books of auditor for postoffice department admissible in action on mail carriage contract bond.

106 U. S. 537-542, 27 L. 300, DETROIT v. DEAN.

Syl. 1 (X, 419). Jurisdiction obtained by collusion.

Approved in Dawson v. Columbia Avenue etc. Trust Co., 197 U. S. 181, 49 L. 716, 25 Sup. Ct. 420, applying rule in suit against municipality by mortgagee making mortgagor a party defendant; Woodside v. Vasey, 142 Fed. 619, holding no jurisdiction where claims assigned for collection only to make jurisdictional amount; Kemmerer v. Haggerty, 139 Fed. 696, holding no jurisdiction where nonresident stockholders brought suit to compel corporation to sue third party in federal court; Groel v. United Elec. Co., 132 Fed. 258, in suit by stockholder upon right of action in his corporation, the corporation aligned with defendants.

Distinguished in Doctor v. Harrington, 196 U. S. 587, 49 L. 610, 25 Sup. Ct. 355, holding though ultimate interest of corporation defendant is same as of complaining stockholders, court has jurisdiction where no collusion.

Syl. 2 (X, 420). Stockholder's suit for corporate rights.

Approved in McCampbell v. Fountain Head R. R. Co., 111 Tenn. 69, 102 Am. St. Rep. 731, 77 S. W. 1073, holding stockholder could maintain suit in equity to set aside ultra vires subscription for stock of land company.

106 U. S. 546-551, 27 L. 254, PIERCE v. INDSETH.

Syl. 2 (X, 421). Seals of notary—Judicial notice.

Approved in Clement v. United States, 149 Fed. 320, taking judicial notice of seal of comptroller of currency.

Syl. 5 (X, 421). Evidence of foreign statute.

See 113 Am. St. Rep. 883, note.

106 U. S. 578-583, 27 L. 249, ELGIN v. MARSHALL.

Syl. 2 (X, 424). Jurisdiction—Amount in controversy.

Approved in Morris v. Bean, 146 Fed. 429, in suit concerning water rights, thing in controversy as determining jurisdiction is right to use water.

106 U. S. 583-585, 27 L. 207, PACE v. ALABAMA.

Syl. 2 (X, 426). Constitutional law—Equal protection.

Approved in In re Finley, 1 Cal. App. 211, 81 Pac. 1046, upholding statute punishing with death assault with deadly weapon by life convict.

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106 U. S. 586-589, 27 L. 306, HAYDEN v. MANNING.

Syl. 1 (X, 426). Jurisdiction—Collusive party plaintiff.

Approved in Turnbull v. Ross, 141 Fed. 652, denying jurisdiction where cause of action assigned to nonresident to obtain jurisdiction.

106 U. S. 589-593, 27 L. 298, THOMPSON v. PERRINE.

Syl. 4 (X, 427). Jurisdiction—Bondholder proper plaintiff.

Distinguished in Utah-Nevada Co. v. De Lamar, 133 Fed. 122, 66 C. C. A. 179, denying jurisdiction over suit by assignee of parol contract unless assignor nonresident.

106 U. S. 596-605, 27 L. 251, RED ROCK v. HENRY.

Syl. 1 (X, 427). Statutes—Repeal by implication.

Approved in City of Wichita v. Old Colony Trust Co., 132 Fed. 648, 66 C. C. A. 19, telephone franchise for twenty years not repealed by ordinance granting rights for five years; Territory v. Neville, 10 Okl. 100, 60 Pac. 796, Indian appropriation act reserving land for county seat purposes does not avoid territorial statute granting county right to change county seat.

106 U. S. 613-620, 27 L. 295, ALBRIGHT v. TEAS.

Syl. 1 (X, 429). Jurisdiction—Suits on patents.

Distinguished in Harrington v. Atlantic etc. Co., 143 Fed. 336, holding federal court has jurisdiction where infringement involved as well as contract rights.

106 U. S. 622-623, 27 L. 311, COUNTY OF MADISON v. WARREN.

Syl. 1 (X, 430). Review—Written waiver of jury.

Approved in Shields v. Mongollon etc. Co., 137 Fed. 544, 70 C. C. A. 123, holding oral waiver in open court entered upon minutes sufficient.

106 U. S. 629-644, 27 L. 290, UNITED STATES v. HARRIS.

Syl. 2 (X, 431). Unconstitutionality must be clearly shown.

Approved in United States v. Scott, 148 Fed. 433, holding statute relating to interstate carriers as employers void; United States v. Moore, 129 Fed. 633, holding rights of citizens to organize in unions not a right secured by federal constitution.

Syl. 3 (X, 431). Constitutional law—Due process.

Approved in Cella Com. Co. v. Bohlinger, 147 Fed. 423, holding service of summons on state auditor for foreign corporation not due process.

Distinguished in Ex parte Riggins, 134 Fed. 407, 415, holding abduction of prisoner from jail and murdering him violation of constitutional protection of "due process."

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(X, 430.) Miscellaneous. Cited in United States v. Ju Toy, 198 U. S. 263, 49 L. 1044, 25 Sup. Ct. 644, court will not modify statute but declare it valid or void as a whole; Smiley v. Kansas, 196 U. S. 455, 49 L. 550, 25 Sup. Ct. 289, federal court follows interpretation placed on statute by highest state court.

106 U. S. 644-646, 27 L. 303, ROGERS v. DURANT.

Syl. 1 (X, 431). Lost document—Secondary evidence.

Approved in Brown v. Harkins, 131 Fed. 66, 65 C. C. A. 301, holding evidence of search for lost document insufficient to permit secondary evidence.

106 U. S. 648-660, 27 L. 211, FITZPATRICK v. FLANNAGAN.

Syl. 3 (X, 433). Surviving partner—Control over assets.

Approved in People's National Bank v. Wilcox, 136 Mich. 577, 100 N. W. 27, 29, upholding mortgage by surviving partner on partnership property.

106 U. S. 672-679, 27 L. 271, HAYWOOD v. ANDREWS.

Syl. 1 (X, 435). Equity—Action by assignee.

Approved in Vant-Wond Rubber Co. v. Sternan, 145 Fed. 198, holding allegations of assignment of rights insufficient in suit for infringement of patent.

106 U. S. 679-699, 27 L. 256, GAY v. PARPART.

Syl. 8 (X, 438). Equity will not enforce incomplete decree.

Approved in Harding v. Harding, 198 U. S. 335, 49 L. 1074, 25 Sup. Ct. 679, holding consent decree for separate maintenance of court of another state res judicata.

106 U. S. 700-702, 27 L. 266, GRAND TRUNK RY. v. CUMMINGS.

Syl. 1 (X, 438). Refusal to direct verdict—Waiver.

Approved in Columbia etc. R. Co. v. Means, 136 Fed. 83, 68 C. C. A. 651, holding right to review overruling motion to direct verdict waived; Carle v. Oklahoma W. Mills, 16 Okl. 522, 86 Pac. 68, holding plaintiff waived erroneous holding as to measure of damages by amendment to pleading.

Syl. 2 (X, 438). Negligence—Master and fellow-servant.

Approved in The Hamilton, 146 Fed. 727, applying rule to injuries to crew caused by marine collision; The Luckenbach, 144 Fed. 981, seaman thrown overboard by defective trip-line improperly handled by fellow-servant; Shugart v. Atlanta etc. Ry., 133 Fed. 511, 66 C. C. A. 379, death of fireman caused by fault of engineer and defective roadbed; Gibson v. Canadian Pacific etc. Co., 1 Alaska, 419, applying rule to longshoreman injured by negligence of mate and defective appliances; Tanner v. Harper, 32 Colo. 164, 75 Pac. 406, applying rule where miner injured through negligence of trammer and defective appliances;

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Farrell v. Eastern Machinery Co., 77 Conn. 492, 107 Am. St. Rep. 45, 59 Atl. 614, 68 L. R. A. 239, applying rule to defective material provided by employer and selected by fellow-servant; Gordon v. Chicago etc. Ry. Co., 129 Iowa, 753, 106 N. W. 179, action by brakeman for injuries caused by defective road and couplings; Campbell v. Railway Trans. Co., 95 Minn. 379, 104 N. W. 549, anterior negligence in improperly closing doors does not excuse railroad for failure to inspect; St. Louis etc. Ry. Co. v. Swinney, 34 Tex. Civ. 220, 78 S. W. 548, fireman may recover though engineer guilty of contributory negligence in railroad collision; Hicks v. Southern Pac. Co., 27 Utah, 532, 76 Pac. 627, determining liability of railroad for injuries to section-hand caused by negligent orders of foreman.

CVII UNITED STATES.

107 U. S. 3-20, 27 L. 346, EMBRY v. PALMER.

Syl. 1 (X, 441). Estoppel of appellant by acceptance of amount.

Approved in Hodges v. Smith, 34 Tex. Civ. 639, 640, 79 S. W. 330, 331, appellant not estopped to prosecute appeal by acceptance of amount of judgment which appellee concedes to be due, appeal involving only right to further recovery.

Distinguished in In re Sachleben, 106 Mo. App. 312, 80 S. W. 739, where determination of amount of cash in guardian's hands at time of final account involved ward's claim of exorbitant compensation to guardian, and failure of guardian to account for rents, ward's receipt for amount due on allowance of account precludes appeal from account as allowed; In re Black's Estate, 32 Mont. 54, 79 Pac. 555, where after appeal by distributees from decree of distribution, but before appeal heard, appellants gave receipts for award under decree and it was satisfied and administrator discharged, appeal dismissed.

Syl. 4 (X, 442). Equitable relief against judgment.

Approved in Brown v. Pegram, 149 Fed. 520, judgment debtor not debarred from enjoining its collection on allegation of setoffs against beneficial owners which would render enforcement inequitable because setoffs are unliquidated, where defendants are nonresidents of United States or insolvent; Nelson v. Meehan, 2 Alaska, 493, vacating, on motion, judgment obtained by fraud and perjury; Farmers' etc. Warehouse Co. v. Pridemore, 55 W. Va. 463, 47 S. E. 263, refusing to enjoin judgment at law because it was based on forged documentary evidence and no reason shown why forgery not proven at trial other than surprise.

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107 U. S. 20-38, 27 L. 359, BURGESS v. SELIGMAN.

Syl. 1 (X, 443). Liability of pledgee of stock as stockholder.

Approved in Colonial Trust Co. v. McMillan, 188 Mo. 572, 107 Am. St. Rep. 335, 87 S. W. 941, under Rev. St. 1899, § 1324, one holding stock as collateral security is not liable as stockholder.

Syl. 5 (X, 444). Following state decisions.

Approved in Treat v. City of Chicago, 130 Fed. 444, 64 C. C. A. 645, following state decision upholding and construing Illinois local improvement statute; Graves v. Commissioners, 135 N. C. 54, 47 S. E. 136, Code, § 1996, providing that county commissioners may subscribe to railroad stock, does not authorize issuance of township bonds in aid of road not yet begun.

Syl. 6 (X, 446). Following state decision contrary to federal.

Approved in Board of Commrs. v. Tollman, 145 Fed. 763, 764, applying rule where at time county railroad aid bonds issued there was no state decision construing constitutional provision which it was later claimed was violated by statute under which bonds issued; Harrison v. Remington Paper Co., 140 Fed. 388, holding void Laws Kan. 1898, c. 10, p. 27, repealing prior statute giving stockholder individual action to enforce stockholder's double liability and substituting therefor action by receiver, as applied to contracts made prior to its passage.

Syl. 7 (X, 446). State statutory construction—Federal courts.

Approved in Mead v. Portland, 200 U. S. 163, 50 L. 420, 26 Sup. Ct. 171, following state decision construing statute as legislative change of grade; Tampa Waterworks Co. v. Tampa, 199 U. S. 244, 50 L. 173, 26 Sup. Ct. 23, following state decision that city, by contract with water company, could not deprive itself of right to regulate rates conformably with state statute passed to carry into effect constitutional provision in force when contract made; Northwestern Sav. Bank v. Centreville Station, 143 Fed. 85, in action on town bonds by bona fide purchaser, state decisions holding bonds invalid, rendered after issuance and sale of bonds in controversy, to which plaintiff not party, do not govern his rights; Mankato v. Barber Asphalt Pav. Co., 142 Fed. 337, refusing to follow state decision holding city street improvement contract void where decision rendered after performance of contract; Westinghouse Air Brake Co. v. Kansas City So. Ry. Co., 137 Fed. 35, under Mo. Rev. St., §§ 4239 et seq., one furnishing materials to railroad without state is entitled to lien on its property in state; Wicomico Co. Commrs. v. Bancroft, 135 Fed. 983, construing Code Md. 1888, art. 23, §§ 187, 188, providing for reorganization of railroad sold on foreclosure, with reference to exemption from taxation; Farmers' Loan etc. Co. v. Sioux Falls, 131 Fed. 909, determining power of municipality to issue bonds under South Dakota constitutional provision limiting indebtedness; Columbia Ave. Sav. Fund etc. Co. v. Dawson, 130 Fed. 166, applying rule in determining validity of contract by city for annual hydrant rental for term of years; York v. Washburn, 129 Fed. 569, 64 C. C. A. 132, federal courts bound by state decision as to whether oral contract for lease of

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realty for more than year not complying with statute of frauds is void or unenforceable at election of parties; Great Southern Fire Proof Hotel Co. v. Jones, 193 U. S. 542, 544, 547, 48 L. 785, 786, 787, 24 Sup. Ct. 576, upholding Ohio Rev. St., §§ 3184-3185a, relating to mechanics' liens; Julian v. Central Trust Co., 193 U. S. 103, 48 L. 635, 24 Sup. Ct. 399, state decision that property covered by blanket mortgage of railroad remains liable after federal foreclosure sale for debts thereafter accruing against mortgagor is not conclusive on federal courts; dissenting opinion in Muhlker v. New York etc. R. R. Co., 197 U. S. 574, 49 L. 879, 25 Sup. Ct. 522, majority holding owner of realty abutting on city street who acquired title when state courts had decided that one so situated had contract right to light and air is protected against impairment of easements by change of railroad to elevated road in compliance with subsequent statute.

Distinguished in Yocum v. Parker, 134 Fed. 213, 67 C. C. A. 227, will devising land to son absolutely, with understanding that if he die without legal issue lands shall pass to others, gave son fee simple divestable on his dying without living issue.

(X, 443.) Miscellaneous. Cited in Parkey v. Ramsey, 111 Tenn. 308, 76 S. W. 813, effect of mistake on estoppel.

107 U. S. 38-59, 27 L. 370, TURNER v. MARYLAND.

Syl. 1 (X, 449). Commerce—State inspection act.

Approved in Bazemore v. State, 121 Ga. 621, 49 S. E. 701, upholding act regulating sale of seeded cotton.

(X, 449.) Miscellaneous. Cited in Territory v. Denver etc. R. R. Co., 12 N. M., 434, 78 Pac. 76, upholding hide inspection act of 1901.

107 U. S. 59-63, 27 L. 383, PEOPLE v. COMPAGNIE GENERALE TRANSATLANTIQUE.

Syl. 4 (X, 451). Inspection law—Title of act.

Limited in Territory v. Denver etc. R. R. Co., 12 N. M. 434, 78 Pac. 76, upholding hide inspection act of 1901.

107 U. S. 90-97, 27 L. 367, HALL v. MacNEALE.

Syl. 1 (X, 452). Patents—Prior use.

Approved in Eastman v. Mayor etc. of New York, 134 Fed. 858, 69 C. C. A. 628, determining use of improvement in pumps for fire engines by inventor who placed device on engine of which he was engineer as not experimental.

Distinguished in Bryce Bros. Co. v. Seneca Glass Co., 140 Fed. 173, upholding Shrader patent No. 592,920, for machine for etching glass, as not having been abandoned by sale of its product.

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107 U. S. 98-102, 27 L. 413, GREEN BAY ETC. R. R. CO. v. UNION ETC. CO.

Syl. 1 (X, 452). Liability on ultra vires contract.

Approved in Fidelity Trust Co. etc. v. Louisville Gas. Co., 118 Ky. 594, 111 Am. St. Rep. 302, 81 S. W. 929, gas company charter providing that it may issue bonds for certain sum and give mortgage to secure them does not prohibit it from guaranteeing bonds for much larger sum sold by it after it had lawfully acquired them. See 111 Am. St. Rep. 310, note.

Syl. 2 (X, 453). Railroad authorized to run steamers—Hiring.

Approved in State v. Canadian Pac. Ry. Co., 100 Me. 206, 60 Atl. 902, determining right to tax railroad under Rev. St. 1883, c. 6, § 42, as amended in 1901.

107 U. S. 102-110, 27 L. 325, MYRICK v. MICHIGAN CENTRAL R. R. CO.

Syl. 1 (X, 454). Carriers—Duty as to through freight.

Approved in Pittsburg etc. Ry. Co. v. Bryant, 36 Ind. App. 345, 75 N. E. 831, instrument given by railroad's agent to shipper reciting delivery of goods to be shipped according to directions subject to conditions of bill of lading did not constitute contract to ship goods; Eckles v. Missouri etc. Ry. Co., 112 Mo. App. 250, 87 S. W. 102, carrier receiving through freight to be forwarded over certain connecting lines and receiving charges for entire shipment is liable for loss not on own line though contract provided it should be liable for carriage only on own line; Fremont etc. R. Co. v. New York etc. R. Co., 66 Neb. 165, 92 N. W. 133, 59 L. R. A. 939, railroad having joint traffic agreement with other company may enter into express contract with shipper limiting liability to transportation over own line. See 106 Am. St. Rep. 609, note.

Syl. 2 (X, 455). Carrier's liability beyond line.

Approved in dissenting opinion in Hutchins v. Pennsylvania R. R. Co., 181 N. Y. 195, 106 Am. St. Rep. 537, 73 N. E. 976, majority holding where passenger asks for through ticket and agent gives him one without notifying him of conditions limiting liability for injury to baggage on connecting line, initial carrier is liable for loss by connecting carrier. See notes, 105 Am. St. Rep. 361; 106 Am. St. Rep. 606.

Syl. 3 (X, 455). Carrier's receipt of consignment beyond line.

See 106 Am. St. Rep. 607, note. Distinguished in Northern Pac. Ry. Co. v. American Trading Co., 195 U. S. 459, 49 L. 278, 25 Sup. Ct. 84, special agreement by carrier to transport through shipment by vessel of connecting carrier sailing on certain results from acceptance of through rate for shipment via such vessel.

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107 U. S. 110-123, 27 L. 354, BUSH v. KENTUCKY.

Syl. 1 (X, 456). Removal—Quashal of indictment.

Approved in Kentucky v. Powers, 139 Fed. 485, determining right of removal where defendant in criminal prosecution discriminated against in selection of jurors.

Syl. 2 (X, 456). Setting aside panel—Exclusion of negroes.

Approved in State v. West, 116 La. 628, 40 So. 921, following rule.

Syl. 3 (X, 456). Indictment of negro—Grand jury of whites.

Approved in Kentucky v. Powers, 201 U. S. 30, 50 L. 647, 26 Sup. Ct. 387, reversing 139 Fed. 480, 486, 492, determining right to remove criminal prosecution where defendant discriminated against in selection of jurors.

(X, 456.) Miscellaneous. Cited in Kentucky v. Powers, 139 Fed. 454, as assuming validity of Rev. St., § 641.

107 U. S. 123-126, 27 L. 437, KENDALL v. UNITED STATES.

Syl. 1 (X, 457). Limitations—Suit against government—Disability.

Approved in Walker v. United States, 139 Fed. 410, in case of suit by marshal for fees, limitation prescribed by Comp. St. 1901, p. 752, begins to run as to each item from time service rendered and not from expiration of plaintiff's term of office.

107 U. S. 147-161, 27 L. 431, MONTCLAIR v. RAMSDELL.

Syl. 1 (X, 458). All parts of statute given effect.

Approved in In re Thorp, 130 Fed. 376, where lien on bankrupt's property was void as to creditors under state law by reason of failure to record it, it was void as to trustee under Bankr. Act, §§ 67a. 67d; Lewis v. Territory, 7 Ariz. 55, 60 Pac. 694, under Pen. Code, par. 2040, defendant testifying in own behalf as to circumstances of homicide and his whereabouts before and after killing cannot be asked whether he was ever convicted of felony.

Syl. 2 (X, 458). Statutes—One subject embraced in title.

Approved in Blair v. Chicago, 201 U. S. 451, 50 L. 823, 26 Sup. Ct. 427, upholding Illinois Acts 1859, 1861, and 1865, concerning horse railways in Chicago; Ex parte Loving, 178 Mo. 205, 77 S. W. 510, upholding Sess. Acts 1903, p. 213, relating to treatment and control of neglected children in certain counties.

Syl. 3 (X, 458). Statute embracing over one subject.

Approved in Pioneer Irr. Dist. v. Bradley, 8 Idaho, 318, 101 Am. St. Rep. 201, 68 Pac. 297, upholding Sess. Laws 1901, p. 191, relating to reclamation and irrigation of desert lands; In re Schley, 71 Kan. 269, 80 Pac. 632, upholding Gen. St. 1901, § 6521, relating to inquests in lunacy.

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107 U. S. 162, 163, 27 L. 436, MONTCLAIR v. DANA.

Syl. 1 (X, 458). Direction of verdict.

Approved in Chicago etc. Ry. Co. v. Andrews, 130 Fed. 74, 64 C. C. A. 399, holding plaintiff stepping on to railroad crossing directly in front of moving train contributorily negligent.

107 U. S. 163-173, 27 L. 397, RUSSELL v. ALLEN.

Syl. 1 (X, 461). Charitable trusts—Details of trust omitted.

Approved in Biscoe v. Thweatt, 74 Ark. 549, 86 S. W. 433, upholding devise to vestrymen of church and to their successors with power to sell and dispose of property.

Syl. 4 (X, 461). Charity for indefinite number.

Approved in Tincher v. Arnold, 147 Fed. 670, upholding bequest to create fund to establish school for boys resident in Illinois between ages of twelve and eighteen years who are unable to educate themselves; Gidley v. Lovenberg, 35 Tex. Civ. 211, 79 S. W. 836, upholding devise of fund to be used in organizing and maintaining home for bettering conditions of unfortunate widows and orphans of certain city.

Distinguished in Miller v. Ahrens, 150 Fed. 657, under laws of West Virginia, devise in trust for benefit of association of individuals who are unnamed and whose membership was not and could not be known is void for uncertainty.

Syl. 5 (X, 461). Bequest for charity not yet existing.

Approved in Tincher v. Arnold, 147 Fed. 669, upholding bequest of residuary estate to trustees to accumulate till it reaches certain sum, part of principal and future income to be then devoted to certain charity; Codman v. Brigham, 187 Mass. 313, 72 N. E. 1009, provision of will creating charitable trust for accumulation is valid though it requires fund to be held for period beyond time prescribed by rule against perpetuities; dissenting opinion in Danforth v. Oshkosh, 119 Wis. 306, 97 N. W. 274, arguendo.

Syl. 7 (X, 462). Charitable bequest.

Approved in Brigham v. Peter Bent Brigham Hospital, 134 Fed. 519, 528, 67 C. C. A. 393, upholding will directing executors to manage residuary estate for twenty-five years and pay certain legacies from income and add balance to principal and at expiration of term to form corporation, to whom estate to be transferred, to be used for founding hospital for indigent sick; Estate of Merchant, 143 Cal. 543, 77 Pac. 477, upholding bequest to trustees for benefit of Oakland Red Cross Society of California.

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107 U. S. 174-191, 27 L. 401, JONES v. HABERSHAM.

Syl. 9 (X, 464). Charitable devise—Indigent widows.

Approved in Grant v. Saunders, 121 Iowa, 82, 100 Am. St. Rep. 310, 95 N. W. 411, bequest in trust for poor to be given to objects and such persons as trustee thinks best to help is charitable bequest.

Syl. 10 (X, 464). Devise to charity and then over.

Approved in Brigham v. Peter Bent Brigham Hospital, 134 Fed. 519, 67 C. C. A. 393, upholding will directing executors to manage residuary estate for twenty-five years and pay certain legacies from income and add balance to principal, and at expiration of term to form corporation, to whom estate to be transferred, to be used for founding hospital for indigent sick; Codman v. Brigham, 187 Mass. 313, 72 N. E. 1009, upholding will creating charitable trust and devising residuary estate to be invested and accumulated for term of years beyond time prescribed by rule against perpetuities; MacKenzie v. Trustees of Presbytery of Jersey City, 67 N. J. Eq. 670, 61 Atl. 1035, 69 L. R. A. (N. S.) 227, upholding trust for public worship and instruction for benefit of indefinite number of persons of Presbyterian faith.

Syl. 12 (X, 465). Corporations—Restriction as to amount of property.

Approved in Brigham v. Peter Bent Brigham Hospital, 134 Fed. 527, 67 C. C. A. 393, where by special act state has enlarged capacity of charitable corporation to enable it to accept gift, power of corporation in that respect cannot be questioned.

Syl. 13 (X, 465). Corporation's power to execute charitable trust.

Approved in Speer v. Colbert, 200 U. S. 145, 50 L. 412, 26 Sup. Ct. 201, Georgetown College has power to take bequest to be used as endowment for prosecution of research in colonial history of Maryland and District of Columbia; Biscoe v. Thweatt, 74 Ark. 549, 86 S. W. 433, upholding devise to vestrymen of church and their successors with power to sell and dispose of lands as they may deem best; Stearns v. Newport Hospital, 27 R. I. 316, 62 Atl. 135, corporation authorized to maintain hospital to receive, care for and heal "sick or hurt" may accept trust for care of "sick, hurt, injured or infirm poor persons."

Syl. 16 (X, 466). Charitable devise to church to be erected.

Approved in Gidley v. Lovenberg, 35 Tex. Civ. 211, 79 S. W. 836, upholding devise of fund to be used in organizing and maintaining home for bettering condition and comforting unfortunate widows and orphans of certain city.

(X, 463.) Miscellaneous. Cited in Tincher v. Arnold, 147 Fed. 677, federal courts follow state decisions as to validity of charitable bequests; Sioux City v. Chicago etc. Ry. Co., 129 Iowa, 704, 106 N. W.

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187, title to accreted or reclaimed land goes with fee of land to which it is annexed.

107 U. S. 192-205, 27 L. 438, ATLANTIC WORKS v. BRADY.

Syl. 2 (X, 466). Patents—Monopoly of ideas.

Approved in New York Belting etc. Co. v. Sierer, 149 Fed. 770, holding Furness & Watts patent No. 527,961, for tiled floor, void in view of prior art; Gates Iron Wks. v. Overland etc. Min. Co., 147 Fed. 702, Hoyt patent No. 525,419, for improvement in gyrating stone-crushers, is void; Western Elec. Co. v. Rochester Tel. Co., 145 Fed. 42, Scribner & McBerty patent No. 559,411, for signaling apparatus, is void in view of prior art; Western Elec. Co. v. Rochester Tel. Co., 142 Fed. 775, Scribner patent No. 427,621, for improvements in telephone switchboards, is void in view of prior art; Daylight etc. Mfg. Co. v. American etc. L. Co., 140 Fed. 182, holding void Cummings patents Nos. 695,283, 695,284, and 710,434, for method of making prismatic glass windows; Dodge Coal Storage Co. v. New York etc. R. R. Co., 139 Fed. 985, Piez & Beaumont patents No. 668,960 and No. 688,111, for improvements in storage apparatus, are void for lack of novelty; Sloan Filter Co. v. Portland Gold Min. Co., 139 Fed. 26, Sloan patent No. 587,874, for barrel filter for use in filtration of precious metal solutions, is void for lack of invention; McKenzie Furnace Co. v. Green Eng. Co., 138 Fed. 832, holding Green & Gent patent No. 676,606, for improvement in fire-arches for furnaces, void in view of prior art; Wilce v. Bush Temple of Music Co., 134 Fed. 391, 67 C. C. A. 371, Wilce & Burnham patent No. 531,711, for improvements in flooring, is void in view of prior art; National Tube Co. v. Spang, 135 Fed. 358, 68 C. C. A. 59, Patterson patent No. 581,251, for improvement in method of manufacturing of tubing, is void for lack of invention.

107 U. S. 205-215, 27 L. 484, NEW YORK GUARANTY CO. v. MEMPHIS WATER CO.

Syl. 3 (X, 470). Equity—Adequate law remedy.

Approved in General Elec. Co. v. Westinghouse Elec. & Mfg. Co., 144 Fed. 466, refusing to restrain violation of contract for manufacture and sale of apparatus, providing that in case of violation guilty party should pay other fifty per cent of price at which appliance regularly sold; Kane v. Luckman, 131 Fed. 618, denying jurisdiction to decree specific performance of contract for sale of number of cows at certain price per head, where cows had no peculiar value; Miller v. Schwarner, 130 Fed. 562, denying equity jurisdiction over suit for infringement of patent where process not issued till six days prior to expiration of patent and was returnable thereafter and preliminary injunction not applied for.

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107 U. S. 221-251, 27 L. 506, KRING v. MISSOURI.

Syl. 1 (X, 471). Murder—Change in law—Ex post facto.

Approved in United States v. Owens, 2 Alaska, 484, where one indicted for murder in first degree was convicted of murder in second degree and conviction reversed on appeal, he cannot again be tried for murder in first degree; State v. Tyree, 70 Kan. 208, 78 Pac. 526, where one convicted prior to intermediate sentence law of 1903 was sentenced under such law, and former law provided credits for good behavior and latter did not, latter act was ex post facto as to defendant.

Distinguished in Trono v. United States, 199 U. S. 532, 50 L. 296, 26 Sup. Ct. 121, it is not double jeopardy, within act of 1902, for government of Philippines, to be convicted of homicide in Island supreme court on appeal by accused from judgment of trial court which on acquittal of murder convicted him of assault.

Syl. 4 (X, 472). What is ex post facto law.

Approved in State v. Rooney, 12 N. D. 151, 95 N. W. 515, where after conviction of murder, place of execution changed from county jail to state prison, sentence under new law does not make statute ex post facto; dissenting opinion in Slater v. Mexican National R. R. Co., 194 U. S. 132, 48 L. 905, 24 Sup. Ct. 581, majority denying jurisdiction over action founded on liability for death by wrongful act created by Mexican laws which demand damages awarded to be periodical payments subject to modification from time to time.

107 U. S. 251-264, 27 L. 386, BOWDEN v. JOHNSON.

Syl. 1 (X, 473). Transfer of stock to irresponsible party.

Approved in McDonald v. Dewey, 134 Fed. 532, 67 C. C. A. 408, following rule; McDonald v. Dewey, 202 U. S. 520, 524, 529, 536, 538, 50 L. 1133, 1134, 1136, 1139, 1140, 26 Sup. Ct. 731, holding national bank stockholder liable for debts of bank where he transferred shares to person financially irresponsible when he knew bank insolvent; Muir v. Citizens' Nat. Bank, 39 Wash. 59, 80 Pac. 1008, national bank after voluntary liquidation not required to register subsequent transfer of its stock and to issue new stock to transferee.

Syl. 8 (X, 475). Appeal by old receiver—Dismissal.

Approved in Sykes v. Beck, 12 N. D. 252, 96 N. W. 846, denying motion to dismiss appeal on ground that appellant assigned subject matter of action after judgment and before appeal where appeal taken and prosecuted by assignee.

Distinguished in Fred Macey Co. v. Macey, 135 Fed. 729, 68 C. C. A. 363, where proposed amendment to show jurisdiction is not one which could be made in circuit court, it cannot be made in appellate court, though parties consent.

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107 U. S. 265-318, 27 L. 552, EX PARTE WALL.

Syl. 4 (X, 476). Attorney—Character required to practice.

Approved in State v. Mosher, 128 Iowa, 99, 103 N. W. 111, fact that attorney had ceased to be of good moral character is ground for disbarment, though such is not given as ground for revocation of license by Code, § 324.

Syl. 5 (X, 476). Disbarment—Indictable offense—Answer.

Approved in In re Snow, 27 Utah, 275, 75 Pac. 745, determining right to disbar attorney for filing answer containing matter charging supreme justice with conspiracy.

Syl. 6 (X, 476). Disbarment proceedings—Jury.

Approved in Kirkland v. State, 72 Ark. 177, 105 Am. St. Rep. 25, 78 S. W. 772, 65 L. R. A. 76, upholding act 1899, providing for summary proceedings for abatement of public nuisance without jury; State v. Mosher, 128 Iowa, 89, 103 N. W. 107, and State v. McRae, 49 Fla. 395, 38 So. 607, both holding depositions of absent witnesses are admissible in disbarment proceedings; In re Brown, 2 Okl. 594, 39 Pac. 470, defendant in disbarment proceedings is not entitled to the twenty days' time allowed to answer ordinary summons.

Syl. 9 (X, 478). What is due process.

Approved in In re Francis, 136 Fed. 913, upholding appointment of receiver before adjudication in bankruptcy without notice to incarcerated defendant where other defendants had absconded and indebtedness created through fraud.

Syl. 12 (X, 478). Disbarment, when exercised.

Approved in In re Snow, 27 Utah, 279, 75 Pac. 746, determining right to disbar attorney for filing answer containing matter charging supreme justice with conspiracy.

107 U. S. 325-335, 27 L. 319, STANDARD OIL CO. v. VAN ETTEN.

Syl. 4 (X, 480). Account rendered, when becomes stated.

Approved in Burlee Dry Dock Co. v. Morris etc. Dredging Co., 145 Fed. 741, determining liability for repairs to scow.

Limited in Sharp v. Behr, 136 Fed. 798, where plaintiff entitled to dollar for royalty on ore, and defendant wrote as to necessity for reduction of royalty to fifty cents, and plaintiff did not reply thereto nor to account crediting him with royalties at fifty cents, but refused to accept check sent ten weeks later as full payment, he is not precluded from claiming contract rate.

107 U. S. 348-361, 27 L. 378, CHAPMAN v. COUNTY OF DOUGLAS.

Syl. 2 (X, 481). Restitution by county—Unauthorized receipt.

Approved in Gilman v. Fernald, 141 Fed. 944, where town having power to borrow but not to issue negotiable bonds borrowed money on

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its void bonds, which it used, lender may recover sum lent; Chelsea Sav. Bank v. City of Ironwood, 130 Fed. 412, 413, 66 C. C. A. 230, where city issued bonds subsequently declared void for irregularity in issuance and sold same to firm, which paid part of price and resold them, city is liable to holders for consideration paid to exclusion of receiver for original purchaser; Howard County v. Lambright, 72 Ark. 334, 80 S. W. 149, county not liable for value of bridge built on public road without county's authority where bridge not shown to have been taken or used by public; City of Guthrie v. Territory, 1 Okl. 198, 31 Pac. 193, 11 L. R. A. 418, upholding statute providing for payment by village corporation succeeding provisional government of debts of latter; State v. Knoxville, 115 Tenn. 184, 90 S. W. 292, where city board's census enumerators made false reports of scholastic population, whereby city schools received state moneys in excess of its share, state could recover such moneys; Criswell v. Board of Directors, 34 Wash. 432, 75 Pac. 987, where contractor for school building made changes without consent of board, and district accepted and used building, it is liable for reasonable value of building.

Syl. 3 (X, 482). Unauthorized purchase by county—Vendor's remedy.

Approved in In re Waterloo Organ Co., 134 Fed. 344, 67 C. C. A. 255, where corporation president gave purchaser of stock his personal note for stock, and latter indorsed note to secretary, who gave him order for bonds, and note never collected, bonds were ultra vires, and not allowable against corporation's bankrupt estate.

(X, 481.) Miscellaneous. Cited in 111 Am. St. Rep. 457, note.

107 U. S. 361-365, 27 L. 495, JAFFRAY v. McGEHEE.

Syl. 3 (X, 484). Following state statutory construction.

Approved in In re Wood, 147 Fed. 878, under Wisconsin laws homestead of bankrupt is exempt, though purchased by him while insolvent from proceeds of nonexempt property.

107 U. S. 365-378, 27 L. 419, WIGGINS FERRY CO. v. EAST ST. LOUIS.

Syl. 2 (X, 485). State ferry license—River boundary.

Approved in Commonwealth v. Ayer etc. Tie Co., 117 Ky. 169, 77 S. W. 688. home port of vessel engaged in interstate commerce is its situs for taxation though owner resides in different state.

Syl. 3 (X, 486). Licensing power is police power.

Approved in Wallace v. Mayor etc. of Reno, 27 Nev. 86, 73 Pac. 533, 63 L. R. A. 337, liquor license may be revoked without notice to licensee where there is reason to believe business is nuisance; Norfolk etc. Ry. Co. v. Suffolk, 103 Va. 501, 49 S. E. 659, under

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Suffolk Town Charter, § 18, providing for occupation tax ordinance imposing license tax on railroad doing business in town, is valid.

107 U. S. 378-402, 27 L. 609, KOUNTZE v. OMAHA HOTEL CO.

Syl. 1 (X, 486). Scope of liability on appeal bond.

Approved in Cook v. Smith, 67 Kan. 55, 72 Pac. 525, under petition on bond conditioned for payment of damages occasioned by stay of proceedings in action for money judgment, allegation that judgment debtor insolvent when judgment rendered, substantial damages not recoverable.

Syl. 4 (X, 488). Mortgage foreclosure—Receiver for rents.

Approved in Baker v. Hill, 100 Md. 140, 59 Atl. 276, appointing receiver to collect rents for mortgagee where bill for dissolution of loan association, which was mortgagor, filed and no rent collected.

107 U. S. 402-406, 27 L. 527, HAHN v. UNITED STATES.

Syl. 1 (X, 488). Contemporaneous statutory construction.

Approved in Avery v. Pima Co., 7 Ariz. 32, 60 Pac. 703, county sheriff caring for federal prisoners is not entitled to extra compensation; Henry v. State, 87 Miss. 59, 39 So. 872, upholding Code 1892, § 3201, providing for working convicts on farm leased for that purpose; Pitts v. Logan County, 3 Okl. 740, 41 Pac. 591, territorial act regulating accounting of fees received by clerks of district courts of territory is void; Mann v. County Court, 58 W. Va. 660, 52 S. E. 779, Code 1899, c. 114, § 2, does not prohibit circuit or county courts from adjourning to distant day; dissenting opinion in Bates etc. Co. v. Payne, 194 U. S. 111, 48 L. 896, 24 Sup. Ct. 595, majority upholding postmaster general's refusal to admit as second-class matter musical publication, each issue of which treats of work of single musician and is complete in itself.

107 U. S. 407-413, 27 L. 592, CAMPBELL v. UNITED STATES.

Syl. 1 (X, 489). Tariff—Treasury regulations as to rebate.

Approved in United States v. Hyams, 146 Fed. 18, upholding circuit court's jurisdiction over claim for tobacco rebate granted by Comp. St. Supp. 1905, p. 445, though no contractual liability involved; United States v. Foreman, 5 Okl. 257, 48 Pac. 98, one suing in territorial court exercising federal jurisdiction for moneys paid on lands erroneously entered and for which entry canceled need not show surrender of duplicate receipt and execution of relinquishment of claim to land as provided by act of Congress of June 16, 1880.

Syl. 2 (X, 489). Regulations as to procedure to recover rebates.

Approved in United States v. Hyams, 146 Fed. 19, ruling of internal revenue commissioner denying claim for rebate is not conclusive on courts; Stratton v. Oceanic Steamship Co., 140 Fed. 832, upholding immigration rule requiring master or owner of vessel bringing in

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alien for purpose of proceeding directly to foreign country, to deposit amount of head tax before landing to be refunded on alien passing out of country; Powell v. United States, 135 Fed. 882, upholding revenue commissioners rules of April 28, 1902, for claims for rebate of taxes on manufactured tobacco and snuff.

107 U. S. 414-417, 27 L. 542, WOOD v. UNITED STATES.

Syl. 1 (X, 490). Change in pay of retired officer.

Distinguished in Reed v. Sehon, 2 Cal. App. 59, 83 Pac. 79, retired army officer is not, by reason of retirement, ineligible to civil state office under Const., art. 4, § 20.

107 U. S. 437-444, 27 L. 531, MERRIAM v. UNITED STATES.

Syl. 1 (X, 491). Construction of contracts—Surrounding circumstances.

Approved in Armour Packing Co. v. Metropolitan Water Co., 130 Fed. 855, 65 C. C. A. 335, where ordinance granting water franchise provided rates should not exceed those given to other city to which company furnished water, it related to prices charged by corporation and not to prices charged by such city after it had purchased plant; French v. Sparrow Kroll Lumber Co., 135 Mich. 430, 97 N. W. 963, construing deed containing exception of "certain pine trees standing on land"; Kitching v. Brown, 180 N. Y. 420, 73 N. E. 242, 70 L. R. A. 742, where covenant in deed executed in 1873 prohibited use of property for tenement house, expert evidence admissible to determine whether it embraces "apartment house."

107 U. S. 445-453, 27 L. 537, COOK COUNTY NAT. BANK v. UNITED STATES.

Syl. 2 (X, 492). Trustee's setoff against trust funds.

Distinguished in Smith v. Perry, 197 Mo. 452, 459, 95 S. W. 340, 343, where estate of cestui que trust was insolvent, trustee's estate in action for accounting may set off in equity claims held by trustee individually against cestui que trust.

Syl. 5 (X, 493). National bank act exclusive.

Approved in Cogswell v. Second National Bank, 76 Conn. 255, 56 Atl. 576, upholding equity jurisdiction to enforce rights of solvent national bank against those guilty of mismanagement of its affairs; In re Burke, 25 R. I. 303, 55 Atl. 826, arguendo.

107 U. S. 454-463, 27 L. 605, WABASH RY. CO. v. McDANIELS.

Syl. 2 (X, 493). Master—Safe appliances.

Approved in Neeley v. Southwestern etc. Oil Co., 13 Okl. 373, 75 Pac. 543, 64 L. R. A. 145, applying rule where employee in cotton-oil mill injured by breaking of defective ladder; Norfolk etc. Ry. Co. v. Wade, 102 Va. 143, 45 S. E. 916, holding railroad liable for injury

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to servant from hidden defect in handle of handcar which railroad could have discovered.

Syl. 3 (X, 494). Ordinary care as between master and servant.

Approved in Virginia Portland Cement Co. v. Luck, 103 Va. 445, 49 S. E. 583, determining master's liability for injury to servant engaged in trucking cement in factory and was injured while passing over board placed in floor opening.

Syl. 4 (X, 495). Negligence—Ordinary care defined.

Approved in dissenting opinion in The Tresco, 134 Fed. 823, 67 C. C. A. 465, majority holding where stevedore injured by pulling out of splicing in cable and day prior only visual inspection of cable made, whereas removal of covering of splice would have shown defect, ship was negligent.

Denied in Southern Pac. Co. v. Hetzer, 135 Fed. 282, 283, 68 C. C. A. 26, reasonable care is that care which prudent railway officials exercise under like circumstances in selection of competent servants.

Syl. 5 (X, 495). Care exercised by master for jury.

Approved in Hilton v. Fitchburg R. R. Co., 73 N. H. 117, 59 Atl. 626, where blacksmith usually assisted by left-handed helper and was furnished right-hander, who was unskillful in striking left-handed, and injured blacksmith, master not liable.

107 U. S. 463-466, 27 L. 526, BALDWIN v. STARK.

Syl. 2 (X, 495). Conclusiveness of land decision.

Approved in Estes v. Timmons, 12 Okl. 544, 73 Pac. 305, and Adams v. Couch, 1 Okl. 34, 26 Pac. 1015, both following rule; Miller v. Margerie, 149 Fed. 697, under Comp. St. 1901, p. 1467, relating to trial of Alaska townsite contests before trustee, decision of trustee is final as to questions of fact except in case of fraud or mistake; Cagle v. Dunham, 14 Okl. 615, 78 Pac. 562, refusing to set aside Land Department decision rendered on notice and full hearing, on allegation of perjury committed before department; Paine v. Foster, 9 Okl. 231, 262, 53 Pac. 114, 60 Pac. 25, applying rule to decision of townsite trustees; King v. Thompson, 3 Okl. 648, 39 Pac. 467, refusing to charge holder of legal title as trustee for petitioner for town lot awarded by townsite board where no fraud charged to have been practiced on board by prevailing party and findings of board not set out.

107 U. S. 466-478, 27 L. 408, CLOSE v. GLENWOOD CEMETERY.

Syl. 4 (X, 498). Reserved power to amend corporate charter.

Approved in McKee v. Chautauqua Assembly, 130 Fed. 540, 65 C. C. A. 8, upholding statute consolidating corporation with others organized for different purposes and requiring it to assume their lia-

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bilities, where such other corporations have been under sole control of its own board of trustees.

(X, 496.) Miscellaneous. Cited in Clark v. Rahway Cemetery Co., 69 N. J. Eq. 640, 61 Atl. 263.

107 U. S. 478-484, 27 L. 529, WILLIAMS v. JACKSON.

Syl. 1 (X, 498). Deed from trustee in trust deed.

Approved in Chesapeake Beach Ry. Co. v. Washington etc. R. R. Co., 199 U. S. 251, 50 L. 178, 26 Sup. Ct. 25, deed from trustee in mortgage conveys whatever title he had, though it recites decree of foreclosure; Havighorst v. Bowen, 214 Ill. 96, 73 N. E. 404, where record beneficiary of trust deed acquired fee by deed from grantor of trust deed and trustee released deed before notes secured, which were held by another as collateral, were due, fact that record shows notes not due does not charge subsequent lienholder with notice of improper discharge; Marling v. Nommensen, 127 Wis. 370, 106 N. W. 846, where assignment of mortgage to plaintiff not recorded till after sale by owner, and at time of sale mortgagee released mortgage on payment of debt, and absconded, plaintiff estopped to enforce mortgage against purchaser; dissenting opinion in Wasserman v. Metzger, 105 Va. 769, 771, 54 S. E. 901, where A executed two notes secured by trust deed, and on payment of one it was returned to him uncanceled, and B, colluding with A, went to trustee and demanded sale under such note, and on getting trustee's deed B made trust deed to another and conveyed land to A's wife, she assuming last debt, which she did not pay, she was not bona fide purchaser for value.

(X, 498.) Miscellaneous. Cited in Marling v. Nommensen, 127 Wis. 367, 106 N. W. 845, maker of negotiable note can satisfy it only by payment to owner at that time or to his authorized agent, whether note secured by mortgage or not.

107 U. S. 485-511, 27 L. 337, SUN MUTUAL INS. CO v. OCEAN INS. CO.

Syl. 1 (X, 499). Conclusiveness of findings.

Approved in Anglo-American Land etc. Co. v. Lombard, 132 Fed. 734, 68 C. C. A. 89, determining conclusiveness of findings of fact in law action tried to court.

107 U. S. 519-526, 27 L. 618, DISTRICT OF COLUMBIA v. ARMES.

Syl. 3 (X, 500). Lunatic as witness.

Approved in City of Guthrie v. Shaffer, 7 Okl. 467, 54 Pac. 701, following rule.

Syl. 3 (X, 501). Cities—Frequency of accidents at particular place.

Approved in Yates v. Covington, 119 Ky. 232, 83 S. W. 593, applying rule in action against city for injuries caused by defective sidewalk; Nashville R. R. Co. v. Howard, 112 Tenn. 115, 78 S. W. 1100,

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64 L. R. A 437, in action for injuries to street-car passenger owing to sudden jolting of car caused by defective track, evidence of others that they had been nearly thrown from car at that point on other occasions is admissible; Powell v. Nevada etc. Ry., 28 Nev. 63, 78 Pac. 979, in action for injuries caused by fall from cart when horse frightened by defendant's steam whistle, evidence of frightening of other team admissible; Smith v. Seattle, 33 Wash. 485, 74 Pac. 675, evidence that others at other times had fallen on obstruction in street by which plaintiff injured was admissible.

107 U. S. 529-546, 27 L. 424, PANA v. BOWLER.

Syl. 6 (X, 504). Law governing interest on coupons.

Approved in The Mary N. Bourke, 145 Fed. 911, under contract for repairing vessel made in state where repairs made, interest on cost computed according to laws of such state.

107 U. S. 546-548, 27 L. 583, MYERS v. SWANN.

Syl. 1 (X, 505). Removal for local prejudice—Citizenship.

Distinguished in Boatmen's Bank v. Fritzlen, 135 Fed. 664, 68 C. C. A. 288, defendant who is citizen of state other than that in which suit brought may remove for local prejudice, though plaintiff and some of defendants are citizens of state where action brought.

107 U. S. 557-567, 27 L. 578, MILLS COUNTY v. RAILROAD COS.

Syl. 2 (X, 506). Swamp land fund.

Approved in State v. Bryan, 50 Fla. 373, 39 So. 954, Laws 1905, c. 5384, does not conflict with act of Congress of July 2, 1862, donating to state fund for establishment of college, because c. 5384 provides for teaching of military tactics in college.

107 U. S. 568-580, 27 L. 414, READ v. PLATTESMOUTH.

Syl. 2 (X, 507). Requiring municipality to pay debt—Retroactive.

Approved in Gilman v. Fernald, 141 Fed. 944, where town having power to borrow money but not to issue negotiable bonds borrowed money on its void negotiable bonds, which it used, lender may recover sum lent; Chelsea Sav. Bank v. City of Ironwood, 130 Fed. 412, 66 C. C. A. 230, city which issued and sold bonds for lawful purpose, but which were held invalid for irregularity in issuance is liable for consideration received; School Dist. No. 1 v. School Dist. No. 7, 33 Colo. 47, 78 Pac. 691, upholding Sess. Laws 1901, pp. 137, 138, as amended in 1903, relating to apportionment and appraisement of property of school district lying partly in Denver and partly in Arapahoe County; School City of Rushville v. Hayes, 162 Ind. 197, 70 N. E. 136, successful bidders who have deposited amount required by trustees for bid for school bonds, and which board refused to return on refusal of bidders to take bonds on ground of invalidity, may contest validity of statute under which bonds issued.

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Syl. 3 (X, 507). Legalizing void bonds.

Approved in Leavenworth v. Leavenworth etc. Water Co., 69 Kan. 96, 76 Pac. 455, upholding Laws 1883, c. 34, legalizing ordinances passed by cities of first class; State v. Brown, 97 Minn. 422, 106 N. W. 485, upholding Gen. Laws, 1905, c. 76, 77, legalizing school bonds theretofore voted by cities for schools; Merchants' Nat. Bank v. East Grand Forks, 94 Minn. 251, 102 N. W. 705, upholding Laws 1903, c. 382, relating to levy of taxes and issuance of evidences of indebtedness of cities to defray cost of public improvements theretofore made.

107 U. S. 581-585, 27 L. 518, MEMPHIS & CHARLESTON R. R. CO. v. ALABAMA.

Syl. 1 (X, 508). Removal—Citizenship of adopted corporation.

Approved in Dodd v. Louisville Bridge Co., 130 Fed. 196, determining citizenship of corporation incorporated in several states and formed by consolidation of corporations of said states; Russell v. St. Louis etc. Ry. Co., 71 Ark. 454, 457, 75 S. W. 727, 728, railroad organized in sister state and complying with Acts 1889, p. 43, may exercise power of eminent domain.

Distinguished in Lee v. Atlantic etc. R. Co., 150 Fed. 794, 795, 796, determining citizenship of corporation merged with corporation of another state which has become domesticated by reincorporation.

107 U. S. 586-591, 27 L. 322, AMBLER v. CHOTEAU.

Syl. 1 (X, 509). Equity—Adequate remedy at law.

Approved in United States v. Bitter Root Development Co., 200 U. S. 472, 50 L. 560, 26 Sup. Ct. 318, denying equity jurisdiction over suit for wrongful cutting and conversion of timber from public domain though act of tort-feasor to cover up tracks makes it difficult for government to prove case; General Elec. Co. v. Westinghouse Elec. & Mfg. Co., 144 Fed. 466, refusing to restrain violation of contract for manufacture and sale of goods when it provides that, on violation thereof, violator shall pay as liquidated damages fifty per cent of regular price sale of goods; Garside v. Norval, 1 Alaska, 23, 24, where one cotenant of mining claim, acting as agent of other, sells his interest to third party, equity suit for accounting does not lie.

Distinguished in Southern Pac. R. Co. v. United States, 133 Fed. 657, 658, 66 C. C. A. 581, upholding equity jurisdiction over suit by United States against railroad and its mortgagees to determine what portion of lands erroneously patented had been sold to bona fide purchasers, and to cancel patents to lands not so disposed of.

Syl. 3 (X, 510). Accounting of profits of corporation—Parties.

Approved in Glucose Sug. Ref. Co. v. St. Louis Syrup etc. Co., 135 Fed. 543, president of corporation not insolvent cannot be joined with corporation as defendant in bill for injunction and accounting for infringement of patent by corporation merely because he directs corporation's business.

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107 U. S. 591-595, 27 L. 488, UNION TRUST CO. v. SOUTHER.

Syl. 1 (X, 510). Receivership pending foreclosure—Payment of labor.

Approved in Atchison etc. Ry. Co. v. Osborn, 148 Fed. 610, holders of unsecured claims for damages arising from negligence of mortgaged railroad prior to receivership have no priority over mortgagees on foreclosure.

Distinguished in Gregg v. Metropolitan Trust Co., 197 U. S. 187, 49 L. 719, 25 Sup. Ct. 415, claim for ties necessary to preservation of railroad, furnished within six months of receivership, is not preferred over mortgage lien recorded before contract under which ties furnished was made.

107 U. S. 596, 27 L. 490, UNION TRUST CO. v. WALKER.

Syl. 1 (X, 513). Receivers—Preference of assigned claim for expenses.

Distinguished in Norman v. Edington, 115 Tenn. 314, 89 S. W. 745, assignee of laborer's claim cannot perfect inchoate lien given by Shannon's Code, § 3580, by giving notice there provided.

107 U. S. 597-601, 27 L. 574, DAVIS v. SOUTH CAROLINA.

Syl. 1 (X, 513). Removal of prosecutions against federal officers.

Approved in Kentucky v. Powers, 139 Fed. 485, upholding removal of criminal prosecution under Rev. St., § 641, where defendant discriminated in selection of jurors; Virginia v. Felts, 133 Fed. 96, arguendo.

107 U. S. 602-616, 27 L. 500, BASKET v. HASSELL.

Syl. 1 (X, 514). Necessary parties to appeal.

Approved in Amadeo v. Northern Assur. Co., 201 U. S. 201, 50 L. 726, 26 Sup. Ct. 507, death of insured after judgment for insurer in action on policy does not require dismissal of writ of error, where, to meet averment that plaintiff had no interest in action, caption of declaration was amended to show action was brought for use of corporation and averment inserted to show assignment of policy to corporation.

Syl. 2 (X, 514). Gift causa mortis.

Approved in Allen-West Com. Co. v. Grumbles, 129 Fed. 290, 63 C. C. A. 401, where owner of stock in corporation delivered assignment of interest in its business to wife, but retained certificate, voted shares and received dividends thereon, and four years later indorsed certificates to her, delivery of assignment was not gift; Ragan v. Hill, 72 Ark. 308, 80 S. W. 150, loan by one not expecting to live long of money to firm, which gave receipt agreeing to give money to another in case of lender's death, not gift causa mortis. See 99 Am. St. Rep. 892, note.

Syl. 4 (X, 515). Gift causa mortis—Delivery of order.

Approved in Allen-West Com. Co. v. Grumbles, 129 Fed. 291, 63 C. C. A. 401, where owner of stock in corporation delivered assignment of

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interest in its business to wife, but retained certificate, voted shares and received dividends thereon, and four years later, when indebted, indorsed certificate to her, delivery of assignment was not gift; Phinney v. State, 36 Wash. 248, 78 Pac. 931, 68 L. R. A. 119, where one in fear of impending death gave check to payee with statement that he wanted payee to get his money, and he died before check collected, there was valid gift causa mortis. See 99 Am. St. Rep. 897, note.

Syl. 5 (X, 515). Gift causa mortis—Retention of control.

Approved in Allen-West Com. Co. v. Grumbles, 129 Fed. 295, 63 C. C. A. 401, where owner of stock in corporation delivered assignment of interest in its business to wife, but retained certificate, voted shares and received dividends thereon, and four years later indorsed certificate to her, delivery of assignment was not gift; Noble v. Garden, 146 Cal. 229, 79 Pac. 885, where assignments of stock certificates filled out by owner and corporation secretary given certificates with directions to deliver them to assignees on owner's impending death, there was no gift causa mortis; Industrial Trust Co. v. Scanlon, 26 R. I. 230, 58 Atl. 787, where bank deposit redeposited in names of original depositor and brother, and brother, though not present at deposit, was given book and told it was his, brother entitled to deposit on death of original depositor.

107 U. S. 625-628, 27 L. 543, SCHELL v. COCHRAN.

Syl. 2 (X, 517). Interest on judgment—Penalty.

Approved in Agnew v. Haymes, 141 Fed. 638, where revenue officer wrongfully seizes property and court certifies probable cause and goods are returned intact, officer is not liable.

107 U. S. 629-630, 27 L. 601, SCHELL v. DODGE.

Syl. 1 (X, 517). Change of judgment after term.

Approved in United States v. Four Lorgnette Holders, 132 Fed. 565, judgment of forfeiture of imported merchandise for attempt to defraud custom's laws not vacatable after term, for irregularities in procedure.

107 U. S. 640-648, 27 L. 601, GAGE v. HERRING.

Syl. 1 (X, 519). Patent reissue—Different claims.

Approved in Rawson etc. Mfg. Co. v. Hunt Co., 147 Fed. 240, following rule; Thomson-Houston Elec. Co. v. Black River Tr. Co., 135 Fed. 766, 68 C. C. A. 461, upholding Van Depoele reissue No. 11,872, for traveling contract for electric railways.

(X, 519.) Miscellaneous. Cited in Johnson v. Foos Mfg. Co., 141 Fed. 89, Rev. St., § 973, denying costs where no disclaimer filed, does not apply to costs on appeal where dismissal of infringement suit was erroneous.

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107 U. S. 649-655, 27 L. 576, SLAWSON v. GRAND STREET R. R.

Syl. 1 (X, 521). Dismissal of infringement suit—Void patent.

Approved in Thomas v. St. Louis R. Co., 149 Fed. 754, question of validity of patent on its face may be raised by demurrer in action for its infringement; Conderman v. Clements, 147 Fed. 917, court must dismiss suit to restrain infringement of patent where structure is not patentable though defense not set up in answer.

Syl. 4 (X, 522). Patentable novelty.

Approved in New York Belting etc. Co. v. Sierer, 149 Fed. 769, Furness & Watts patent No. 529,961, for tiled floor, is void in view of prior art; Baker v. Duncombe Mfg. Co., 146 Fed. 748, Baker patents No. 726, 812, and No. 736,346, for process for treating coffee, are void in view of prior art.

107 U. S. 655-671, 27 L. 520, UNITED STATES v. BRITTON.

Syl. 4 (X, 524). Banks—Indictment for false entries.

Approved in United States v. Francis, 144 Fed. 524, where indictment charged conspiracy to commit offense against government on April 18, 1904, and evidence showed defendant came into conspiracy in October, 1902, and indictment found June 15, 1905, offense not barred by limitation under Rev. St., § 1004; United States v. Eastman, 132 Fed. 554, upholding indictment against national bank officer under Rev. St., § 5209, for misapplication of funds.

Syl. 5 (X, 524). Indictment in language of statute.

Approved in Miller v. United States, 136 Fed. 581, 69 C. C. A. 355, holding insufficient indictment under Rev. St., § 4746, for procuring presentation of false pension affidavit.

Syl. 6 (X, 524). Misapplication of bank's funds.

Approved in Clement v. United States, 149 Fed. 319, upholding sufficiency of evidence against national bank president for misapplication of funds under Rev. St., § 5209; United States v. Martindale, 146 Fed. 292, where indictment under Rev. St., § 5209, charged drawing of checks and obtaining payment when officer had no money on deposit, and evidence showed apparent credit on books, government cannot impeach credit by showing deposit previously entered was false; United States v. Green, 136 Fed. 643, holding insufficient indictment under Rev. St., § 5451, for bribery of government officer; United States v. Eastman, 132 Fed. 552, 553, upholding indictment of national bank officer under Rev. St., § 5209, for misapplication of funds.

Distinguished in United States v. Howard, 132 Fed. 354, indictment under Rev. St., § 5393, for subornation of perjury, alleging that defendant knew at time of subornation that testimony to be given was false, willful and contrary to oath, is bad.

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Syl. 7 (X, 525). Banks—Indictment for false entries.

Approved in State v. Piper, 73 N. H. 229, 60 Atl. 744, indictment against bank official for making false entry of moneys of bank paid out, alleging that defendant as assistant cashier had not paid out money, is insufficient.

107 U. S. 671-676, 27 L. 534, UNITED STATES v. CURTIS.

Syl. 1 (X, 526). Notary public—Oath to bank officials.

Approved in In re Pancoast, 129 Fed. 645, under Bankr. Act, § 20, notary public could administer oath to proof of claim.

107 U. S. 676-678, 27 L. 592, NATIONAL BANK OF XENIA v. STEWART.

Syl. 1 (X, 526). National bank's loan on own stock.

Approved in Waterbury v. McKinnon, 146 Fed. 739, that lender, who was resident of Montana, procured note and mortgage securing same to be executed in name of plaintiff, who was Canadian, in order to evade taxation, is no defense to foreclosure.

107 U. S. 678-691, 27 L. 442, ESCANABA CO. v. CHICAGO.

Syl. 2 (X, 527). Navigable waters—State regulation.

Approved in The Nonpareil, 149 Fed. 523, railroad maintaining bridge over Erie canal with piers resting on submerged unprotected cribs extending beyond piers on canal side is liable for injury to canal boat and cargo caused by collision with crib; United States v. Union Bridge Co., 143 Fed. 391, upholding right of United States to require alteration of bridge erected under lawful state authority, where it has become an obstruction to navigation; Corrigan Transit Co. v. Sanitary Dist., 137 Fed. 857, 70 C. C. A. 381, regulation of current introduced into Chicago river, lying wholly within Illinois, by improvements of Chicago sanitary district, is valid except as to Congress; Minnesota Canal etc. Co. v. Koochiching Co., 97 Minn. 442, 107 N. W. 410, denying right to withdraw water from navigable stream by canals and discharge it in different drainage area, thereby impairing navigability; Kansas City etc. R. R. Co. v. Wiygul, 82 Miss. 231, 33 So. 967, 61 L. R. A. 578, Comp. St. 1901, p. 3540, does not deprive railroad which, under state grant, has constructed bridge over navigable stream from making repairs.

Syl. 3 (X, 529). Limiting power of territory—Admission.

Approved in Manigault v. Springs, 199 U. S. 478, 50 L. 278, 26 Sup. Ct. 127, provision of South Carolina constitution that all navigable waters shall forever remain public highways does not prevent legislature from authorizing dam across stream to drain lowlands.

107 U. S. 691-711, 27 L. 584, TRANSPORTATION CO. v. PARKERSBURG.

Syl. 5 (X, 531). Wharfage and tonnage distinguished.

Approved in Conradt v. Miller, 2 Alaska, 439, incorporated Alaska towns have no power to grant franchise to build wharves on public streets

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and navigable waters abutting thereon and to collect tolls from public for use of same.

Syl. 6 (X, 531). Wharfage must be reasonable.

Approved in Weems S. B. Co. v. People's S. B. Co., 141 Fed. 457, 458, 459, where wharf built on bank of navigable stream in country where it constitutes only means by which people can reach river and use means of commerce on same, it cannot be converted into private property by single carrier leasing same.

Syl. 10 (X, 532). State regulation of wharves.

Approved in People v. Reardon, 184 N. Y. 457, 112 Am. St. Rep. 646, 77 N. E. 979, upholding Laws 1905, pp. 474, 477, imposing tax on transfers of corporate stock; State v. Faudre, 54 W. Va. 123, 102 Am. St. Rep. 927, 46 S. E. 270, 63 L. R. A. 877, West Virginia cannot punish one acting under Ohio franchise to operate ferry over Ohio river for charging one coming from Ohio more ferriage than allowed by West Virginia law.

(X, 530.) Miscellaneous. Cited in The Nonpareil, 149 Fed. 523, railroad which maintained bridge over Erie canal with piers resting on submerged unprotected cribs extending beyond piers on canal side is liable for injury to canal boat caused by collision with crib.

107 U. S. 711-769, 27 L. 448, LOUISIANA v. JUMEL.

Syl. 4 (X, 534). Suit against state officer.

Approved in Sanders v. Saxton, 182 N. Y. 480, 481, 482, 108 Am. St. Rep. 826, 75 N. E. 530, state being necessary party to action by land owner against land commissioner and state comptroller to have tax deeds to state declared void, action not maintainable; Buchanan v. State Treasurer, 68 S. C. 420, 47 S. E. 686, denying jurisdiction over mandamus to compel comptroller general to issue salary warrant where there is no statute fixing salary and no appropriation therefor. See 108 Am. St. Rep. 837, note.

Distinguished in Graham v. Folsom, 200 U. S. 255, 50 L. 469, 26 Sup. Ct. 245, mandamus to compel county auditors and treasurers to levy tax to pay judgment on township bonds is not suit against state within inhibition of federal constitution.

Syl. 5 (X, 535). Mandamus proceedings against state.

See 108 Am. St. Rep. 838, note.

Syl. 7 (X, 536). Judicial control of state's financial agents.

Approved in Smith v. Alexander, 146 Fed. 108, refusing preliminary injunction in suit for injunction against state commissioners, real purpose of which is to enforce contract between complainant and state in accordance with construction thereof by complainant, correctness of which is denied.

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107 U. S. 769-812, 27 L. 468, ANTONI v. GREENHOW.

Syl. 4 (X, 538). Judicial control over state financial agents.

Approved in Smith v. Alexander, 146 Fed. 108, refusing preliminary injunction in suit for injunction against state commissioners, real purpose of which is to enforce contract between complainant and state in accordance with construction thereof by complainant, correctness of which is denied; Buchanan v. State Treasurer, 68 S. C. 420, 47 S. E. 686, denying jurisdiction over mandamus to compel comptroller general to issue salary warrant where there is no statute fixing salary and no appropriation therefor. See 108 Am. St. Rep. 837, note.

CVIII UNITED STATES.

108 U. S. 10-11, 27 L. 631, BIGELOW v. ARMES.

Syl. 1 (X, 540). Specific performance—Purchaser with notice.

Approved in Barton v. Dunlap, 8 Idaho, 92, 66 Pac. 836, holding purchaser from vendor with notice of agreement to sell is bound to convey upon payment of purchase price.

108 U. S. 14, 15, 27 L. 634, FEIBELMAN v. PACKARD.

Syl. 1 (X, 541). Appeal by one joint defendant.

Approved in Port v. Schloss Bros. & Co., 149 Fed. 732, dismissing writ of error when both defendants do not join in it, where there was a joint judgment.

108 U. S. 18-24, 27 L. 636, CHICAGO ETC. R. R. v. WIGGINS FERRY CO.

Syl. 2 (X, 542). Federal collateral attack on state judgment.

Approved in First Nat. Bank v. City of Covington, 129 Fed. 804, adjudication in suit for taxes for one year is not conclusive as to liability for next year in federal court, as it is not conclusive in state court.

108 U. S. 24-29, 27 L. 638, ST. LOUIS ETC. R. R. v. SOUTHERN EXPRESS CO.

Syl. 1 (X, 543). What is final appealable decree.

Approved in Stahl v. Stahl, 220 Ill. 190, 77 N. E. 68, holding decree that certain conveyances were in trust and referring case for accounting is final as to title.

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108 U. S. 30, 31, 27 L. 640, MISSOURI ETC. RY. CO. v. DINSMORE.

Syl. 5 (X, 544). Correcting defective record on appeal.

Approved in Flickinger v. First Nat. Bank, 145 Fed. 164, holding where transcript on appeal does not contain all the evidence, proper procedure is to suggest diminution of the record.

108 U. S. 32-51, 27 L. 641, STEBBINS v. DUNCAN.

Syl. 2 (X, 544). Secondary evidence to prove lost instrument.

Approved in Keely v. Moore, 196 U. S. 41, 49 L. 379, 25 Sup. Ct. 169, holding testimony of subscribing witnesses, certificate of proof of death and genuineness of testator's signature proved execution of will; Toledo Traction Co. v. Cameron, 137 Fed. 61, 69 C. C. A. 28, holding when witness cannot be produced at trial, a person who heard him testify, and took notes, at former trial may testify as to what the testimony was; Brown v. Harkins, 131 Fed. 67, 65 C. C. A. 301, denying admissibility of secondary evidence of contents of account-book where proof insufficient to show exhaustive search for original.

Syl. 5 (X, 545). Excluding deposition.

Approved in Columbus Ry. Co. v. Patterson, 143 Fed. 250, holding objection to deposition in federal court on ground that it is not shown that witness is without reach of subpoena is waived if not made at the time and comes too late on appeal.

Syl. 8 (X, 545). Notice from recorded document.

Approved in Cooper v. Burns, 133 Fed. 403, holding conveyance by guardian under order of court and conveyance from purchaser to guardian, when recorded, were notice to mortgagee from guardian and he was not protected.

108 U. S. 51-66, 27 L. 648, CONNECTICUT MUTUAL LIFE INS. CO. v. CUSHMAN.

Syl. 4 (X, 546). Contracting with reference to existing laws.

Approved in Hooker v. Burr, 194 U. S. 420, 48 L. 1050, 1051, 24 Sup. Ct. 706, holding law in force at time of sale governs rights of redemptioners.

Syl. 5 (X, 547). Judicial sale—Interest on redemption.

Approved in Hooker v. Burr, 194 U. S. 426, 48 L. 1053, 24 Sup. Ct. 706, holding independent purchaser at foreclosure sale cannot question validity of statute reducing rate of which existed at date of purchase. See 99 Am. St. Rep. 26, 30, notes.

Distinguished in Bradley v. Lightcap, 195 U. S. 21, 49 L. 74, 24 Sup. Ct. 748, holding law in force at date of mortgage could be changed without affecting rights of purchaser at foreclosure sale who paid mortgage debt in full.

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108 U. S. 66-73, 27 L. 654, MEDSKER v. BONEBRAKE.

Syl. 3 (X, 548). Loan by wife to husband.

Approved in Fritz v. Fernandez, 45 Fla. 332, 34 So. 320, holding when wife pledges her separate estate for husband's debts, she has same rights as other creditors.

108 U. S. 74, 75, 27 L. 640, STUCKY v. MASONIC SAVINGS BANK.

Syl. 1 (X, 548). Bankruptcy—Receipt of debt as preference.

Approved in Hardy v. Gray, 144 Fed. 925, holding bankrupt cannot be denied discharge if he was innocent of any wrong in giving preference; Off v. Hakes, 142 Fed. 365, In re Goodhile, 130 Fed. 475, and Turner v. Fisher, 133 Fed. 595, all holding where creditor did not have reasonable cause to believe debtor insolvent, transfer to him was not fraudulent; Capital Nat. Bank v. Wilkerson, 36 Ind. App. 473, 75 N. E. 839, holding under bankruptcy act trustee cannot recover of a preferred creditor unless creditor had reasonable cause to believe he was preferred; Stevenson v. Milliken etc. Co., 99 Me. 326, 59 Atl. 475, holding payments not preferences; Harmon v. Walker, 131 Mich. 542, 543, 91 N. W. 1026, holding information that creates a suspicion of insolvency is not sufficient to show preference; Suffel v. McCartney Nat. Bank, 127 Wis. 213, 106 N. W. 839, holding taking additional security from debtor by creditor is not in violation of bankruptcy act.

108 U. S. 76-91, 27 L. 656, NEW HAMPSHIRE v. LOUISIANA.

Syl. 2 (X, 549). Real party in interest.

See 101 Am. St. Rep. 171, note.

108 U. S. 110-124, 27 L. 669, OTTAWA v. CAREY.

Syl. 1 (X, 551). Power of municipalities limited.

Approved in Conradt v. Miller, 2 Alaska, 437, town councils in Alaska have no power to grant franchise to build wharves in public streets and navigable waters abutting thereon; In re Bruno Munro, 1 Alaska, 280, towns in Alaska have no power to create courts.

Syl. 4 (X, 552). Municipal corporations to issue aid bonds.

Approved in Scott v. Laporte, 162 Ind. 48, 68 N. E. 282, holding municipal ordinance authorizing private corporation to furnish water to city and pledging taxing power to sustain it is void; Manning v. City of Devil's Lake, 13 N. D. 54, 99 N. W. 53, holding city has no authority to construct bridge outside of its limits for purpose of increasing business of city.

Syl. 5 (X, 552). Exercise of legislative grant.

Approved in Scott v. Laporte, 162 Ind. 49, 68 N. E. 283, holding until legislature grants power to a city, the grant is inoperative; Green Co. v. Shortell, 116 Ky. 126, 75 S. W. 254, holding in the absence of recital in bond, county was not estopped from showing noncompliance with preliminaries necessary to their validity.

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108 U. S. 125-130, 27 L. 675, ARTHUR v. FOX.

Syl. 1 (X, 552). Tariff on nonenumerated articles.

Approved in United States v. Roesseler & H. etc. Co., 137 Fed. 773, 70 C. C. A. 346, holding under tariff act resemblance of articles and not identity is required; Hahn v. United States, 131 Fed. 1001, holding for purpose of fixing duty intention of Congress must be looked to.

108 U. S. 132-143, 27 L. 678, ELLIOTT v. SACKETT.

Syl. 1 (X, 553). Grantee of equity of redemption.

Approved in In re Shoesmith, 135 Fed. 687, 68 C. C. A. 322, holding fraudulent purchaser from bankrupt of mortgaged land bought only equity of redemption; Gill v. Robertson, 18 Colo. App. 319, 71 Pac. 636, holding grantee was not liable for an assumption of mortgage inserted in deed without knowledge of grantee.

Syl. 2 (X, 553). Reformation of instruments.

Approved in Carrell v. McMurray, 136 Fed. 670, holding mistake in deed that it carried rents would be reformed by court of equity; Marshall v. Homier, 13 Okl. 276, 74 Pac. 371, holding where growing crops were to be reserved but were omitted by mistake, deed would be reformed.

108 U. S. 143-153, 27 L. 682, EWELL v. DAGGS.

Syl. 1 (X, 554). Limitation of actions.

Approved in MacMillan v. Clements, 33 Ind. App. 123, 70 N. E. 998, holding payment on note secured by mortgage, if sufficient to take note out of statute of limitations, takes mortgage out also; Hopkins v. Clyde, 71 Ohio St. 150, 104 Am. St. Rep. 737, 72 N. E. 848, holding purchaser of interest of heir of mortgagor may plead statute of limitations; Tinsley v. Lombard, 46 Or. 11, 78 Pac. 895, holding first mortgagee cannot plead statute of limitations against foreclosure of second mortgage by mortgagee in cross-complaint.

Syl. 3 (X, 555). Effect of usury on contract.

Approved in Haggart v. Wilczinski, 143 Fed. 27, holding sale under foreclosure by substituted trustee whose appointment was invalid was voidable; Light v. Conover, 10 Okl. 737, 63 Pac. 968, holding agreement without consent of Indian agent for pasturage on Indian reservations is void; Kelly v. Courter, 1 Okl. 281, 30 Pac. 373, holding where sale of liquor is illegal, failure of landlord to furnish ice to keep liquor cool is not actionable; dissenting opinion in McNeill v. Railroad Co., 135 N. C. 733, 47 S. E. 783, 67 L. R. A. 227, majority holding person traveling on a pass issued in violation of Laws 1891, p. 277, c. 320, § 4, is a passenger.

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108 U. S. 153-157, 27 L. 685, THE BELGENLAND.

Syl. 3 (X, 556). Appeal bond in admiralty.

Approved in Perriam v. Pacific Coast Co., 133 Fed. 144, 66 C. C. A. 206, in admiralty, sureties on stipulation for release of vessel are not parties so as to require them to be joined on appeal.

(X, 556.) Miscellaneous. See 113 Am. St. Rep. 872, note.

108 U. S. 161, 162, 27 L. 687, BARTON v. GEILER.

Syl. 1 (X, 557). State court decision on bankruptcy.

Approved in Rector v. City Deposit Bank Co., 200 U. S. 411, 50 L. 529, 26 Sup. Ct. 289, holding action by trustee in bankruptcy to recover bankrupt's assets presented federal question.

108 U. S. 165-176, 27 L. 688, HILTON v. DICKINSON.

Syl. 5 (X, 558). Pleading—Amount stated as amount in dispute.

Approved in Memphis Keeley Inst. v. Keeley Co., 144 Fed. 631, holding duty of court to dismiss upon its own motion a case over which it has no jurisdiction; Gray v. Grand Forks Merc. Co., 138 Fed. 347, holding under bankruptcy act right of appeal is determined by amount allowed or rejected and not of original claim; Phoenix Ins. Co. v. Moss, 7 Ariz. 276, 64 Pac. 443, holding under Arizona Rev. St., par. 593, judgment for less than $200 is not appealable, although greater sum was asked; Smith v. Chesapeake etc. Ry. Co., 118 Ky. 828, 82 S. W. 411, holding jurisdiction is determined by value of matter in dispute, and not by damages claimed.

108 U. S. 193-199, 27 L. 701, UNITED STATES v. BRITTON.

Syl. 2 (X, 561). Misappropriation of bank funds.

Approved in United States v. Martindale, 146 Fed. 286, holding under Rev. St., § 5209, indictment charging that director of bank between certain dates misapplied stated sum of money is insufficient.

Syl. 3 (X, 561). Knowledge of withdrawal of deposit.

Approved in United States v. Martindale, 146 Fed. 283, holding indictment charging that director of bank misapplied funds "of said association without the knowledge thereof" is not equivalent to saying that it was done without comment of directors.

108 U. S. 199-207, 27 L. 698, UNITED STATES v. BRITTON.

Syl. 1 (X, 561). Abandonment of conspiracy.

Approved in Hyde v. Shine, 199 U. S. 76, 50 L. 94, 25 Sup. Ct. 760, holding any party to a conspiracy may abandon his design before the overt act is done and avoid the penalty.

Syl. 2 (X, 561). Indictment for conspiracy.

Approved in United States v. MacAndrews & Forbes Co., 149 Fed. 831, holding under anti-trust law of July 2, 1890, indictment for con-

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spiracy in restraint of interstate commerce was sufficient; United States v. Bradford, 148 Fed. 417, 423, holding under Rev. St., § 5440, gist of offense is the conspiracy and not the overt act; Ex parte Black, 147 Fed. 837, holding where overt act took place after conspiracy had been consummated, it was ineffective to constitute offense; Wilder v. United States, 143 Fed. 439, 440, 443, 444, 445, 447, holding obstructing administration of justice in action between private citizens is violation of Rev. St., § 5399; United States v. Green, 136 Fed. 656, holding indictment charging conspiracy to defraud government must set for the acts agreed to be done; Wong Din v. United States, 135 Fed. 704, 68 C. C. A. 340, holding indictment for conspiracy in landing Chinese was sufficient.

Syl. 4 (X, 562). Common-law offenses against United States.

Approved in Barclay v. United States, 11 Okl. 509, 69 Pac. 800, holding stealing property in Indian Territory and carrying it into Orage Indian reservation does not constitute larceny under laws of United States.

108 U. S. 212-218, 27 L. 703, ST. PAUL ETC. R. R. CO. v. McLEAN.

Syl. 1 (X, 562). Removal of causes.

Approved in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 245, 49 L. 464, 25 Sup. Ct. 251, holding upon filing petition for removal and bond in proper case, in time, state court loses jurisdiction.

108 U. S. 218-227, 27 L. 706, MANHATTAN MEDICINE CO. v. WOOD.

Syl. 1 (X, 563). Trademarks.

Approved in dissenting opinion in Continental Paper Bag Co. v. Eastern Paper Bag Co., 150 Fed. 755, majority holding Liddell patent No. 558,969, for paper-bag machine, valid as against patent No. 598,497.

Syl. 2 (X, 563). Assignment of trademarks.

Approved in Bulte v. Ingleheart Bros., 137 Fed. 499, 70 C. C. A. 76, assignment of flour trademark independent of business in which it was used was void.

Syl. 3 (X, 564). Fraud of trademark owner.

Approved in Siegert v. Gandolfi, 139 Fed. 921, 922, manufacturer of bitters who falsely holds out his bitters containing no harmful ingredients is not entitled to injunction to prevent unfair competition; Regis v. Jaynes, 185 Mass. 462, 70 N. E. 481, use of trade name after notice that it is copied from plaintiff's name is strong evidence of fraud; Lemke v. Deitz, 121 Wis. 108, 98 N. W. 938, under Rev. St. 1898, § 1409g, sale of label on proprietary medicines which falsely states that medicine is put up by a physician will not be protected by injunction; dissenting opinion in Stewart v. Wright, 147 Fed. 346, majority holding person who, through conspiracy of others, parts with his money under belief he is defrauding others may recover it from those defrauding him.

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108 U. S. 256-259, 27 L. 718, WILKINS v. ELLETT.

Syl. 4 (X, 567). Transfer of note by administrator.

Approved in Coram v. Ingersoll, 148 Fed. 176, holding transfer of note due from a resident of Montana by administrator of that state is valid against all other administrators.

Syl. 4 (X, 567). Suit by administrator.

Approved in Austin v. Snider, 17 Colo. App. 188, 68 Pac. 127, holding where sole heir is entitled to property, appointment of administrator is not necessary.

Syl. 1 (X, 566). Lex domicilii applied to administration.

Approved in Bates Machine Co. v. Norton Iron Works, 113 Ky. 379, 68 S. W. 425, holding debts are assets of deceased at place of his domicile.

108 U. S. 260-267, 27 L. 719, HAMPTON v. PHIPPS.

Syl. 1 (X, 567). Right of creditor to debtor's indemnity.

Approved in Westbrook v. Belton National Bank, 97 Tex. 249, 77 S. W. 943, creditor cannot take advantage of indemnity given to surety by a stranger to the debt.

Syl. 2 (X, 568). Rights of surety.

Approved in Taylor v. Skiles, 113 Tenn. 296, 81 S. W. 1260, party primarily bound to pay debt must devote his entire estate to save surety.

108 U. S. 269-277, 27 L. 719, ROUNDTREE v. SMITH.

Syl. 2 (X, 568). Gambling contracts.

Approved in De Mary v. Burtenshaw, 131 Mich. 333, 91 N. W. 650, in action by grain broker against estate, where jury found contract was not a gambling one, verdict will not be disturbed.

108 U. S. 282-287, 27 L. 728, LEWIS v. CITY OF SHREVEPORT.

Syl. 2 (X, 570). Ratification of void act.

Approved in Pennsylvania Co. v. Cole, 132 Fed. 679, holding void contract made by city council for construction of sewer cannot be ratified.

108 U. S. 288-291, 27 L. 726, FARLOW v. KELLY.

Syl. 2 (X, 570). Contributory negligence.

Approved in McCord v. Atlantic etc. R. R. Co., 134 N. C. 57, 45 S. E. 1033, holding fact that passenger has his arm extended beyond window does not bar recovery.

108 U. S. 292-305, 27 L. 732, ENSMINGER v. POWERS.

Syl. 2 (X, 571). Writ of review.

Approved in In re Holmes, 142 Fed. 394, time within which petition for revision in matter of law under bankruptcy act may be presented

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is limited by time for appeal; Ruley v. Foley, 54 W. Va. 495, 46 S. E. 349, time to appeal runs from date of bond; Ruley v. Foley, 54 W. Va. 494, 46 S. E. 349, time of pendency of appeal is excluded when there has been no decision and writ of review is asked for.

Syl. 4 (X, 571). Writ of review pending appeal.

Approved in First Nat. Bank v. State Nat. Bank, 131 Fed. 431, 65 C. C. A. 414, after appeal from district court has been perfected said court loses jurisdiction.

108 U. S. 317-335, 27 L. 739, BALTIMORE ETC. R. R. v. FIFTH BAPTIST CHURCH.

Syl. 5 (X, 573). Lawful business may be nuisance.

Approved in Muncie Pulp Co. v. Martin, 164 Ind. 35, 72 N. E. 883, where nuisance can be abated, measure of damages is loss of rental value occasioned by its continuance; Mordhurst v. Ft. Wayne etc. Traction Co., 163 Ind. 281, 106 Am. St. Rep. 222, 71 N. E. 646, 66 L. R. A. 105, railroad company liable for any damage to abutting owner caused by operation of its trains; Terminal Co. v. Tellyett, 114 Tenn. 395, 85 S. D. 887, authority to locate railroad yards did not authorize company to impair use of adjoining property; Missouri etc. Ry. Co. v. Mott, 98 Tex. 98, 81 S. W. 288, under statute giving railroad company right of way, it had no authority to erect cattle-pens thereon; Missouri etc. Ry Co. v. Anderson, 36 Tex. Civ. 132, 81 S. W. 788, fact that business of maintaining switchyard is lawful does not give railroad company right to do so if it constitutes a nuisance; Townsend v. Norfolk Ry. & L. Co., 105 Va. 46, 48, 4 L. R. A. (N. S.) 87, 52 S. E. 977, 978, authority given electric light company by statute does not authorize it to so use its railroad as to constitute a nuisance.

Syl. 6 (X, 575). Authority to commit nuisance.

Approved in Anable v. Board of Commrs., 34 Ind. App. 79, 107 Am. St. Rep. 173, 71 N. E. 274, authority to erect pest house must be exercised with regard to rights of private land owner; Gosset v. Southern Ry. Co., 115 Tenn. 384, 89 S. W. 739, legislative authority does not effect claim of private citizen for nuisance not experienced by public; Missouri etc. Ry. Co. v. Anderson, 36 Tex. Civ. 131, 81 S. W. 787, authority to maintain railroad yards did not give company right to disregard rights of others; Townsend v. Norfolk Ry. & L. Co., 105 Va. 35, 4 L. R. A. (N. S.) 87, 52, S. E. 974, holding authority granted electric company did not give it right to maintain nuisance.

Syl. 7 (X, 575). Nuisance affecting personal discomfort.

Approved in United States v. Luce, 141 Fed. 418, injunction granted where nauseating odors from fish factory made quarantine station unhealthy; United States v. Luce, 141 Fed. 408, existence of fish factories causing nauseating odors constitute a nuisance.

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108 U. S. 379-388, 27 L. 760, BOESE v. KING.

Syl. 1 (X, 578). Assignment under bankruptcy act.

Approved in Downer v. Porter, 116 Ky. 427, 76 S. W. 136, state courts may enforce state statute regulating what property shall vest in assignee under deed of assignment.

Syl. 2 (X, 578). Bankruptcy—Suspension of state laws.

Approved in Grunsfeld Bros. v. Brownell, 12 N. M. 199, 76 Pac. 311, act 1889, preventing preferences by insolvent debtors, not suspended by bankruptcy act.

108 U. S. 389-400, 27 L. 769, WARREN v. KING.

Syl. 1 (X, 579). Rights of preferred stockholders.

Approved in Hackett v. Northern Pac. Ry. Co., 140 Fed. 717, rights of preferred stockholder must be determined by intendments of stock certificate.

108 U. S. 401-417, 27 L. 764, DEVOE MFG. CO., PETITIONER.

Syl. 2 (X, 580). Boundary between states.

Approved in Louisiana v. Mississippi, 202 U. S. 50, 50 L. 931, 26 Sup. Ct. 408, holding boundary between states separated by navigable water is middle thereof.

108 U. S. 422-436, 27 L. 775, HAWKINS v. BLAKE.

(X, 581.) Miscellaneous. Cited in Anthes v. Shroeder, 68 Neb. 376, 94 N. W. 613, holding where debtor has several funds, all of which can be reached by one creditor, equity will require him to take payment out of funds he can reach exclusively.

108 U. S. 436-461, 27 L. 780, CLARK v. BARNARD.

Syl. 1 (X, 581). State as party to action.

Approved in Gunter v. Atlantic etc. R. R. Co., 200 U. S. 284, 50 L. 484, 26 Sup. Ct. 252, holding state by voluntarily appearing in action waives right that it cannot be sued without its consent; Railroad Tax Cases, 136 Fed. 237, where there is a fund in court to which state claims title, it may make itself a party to the action.

Syl. 3 (X, 581). Domestication of foreign corporation.

Approved in Russell v. St. Louis etc. Ry. Co., 71 Ark. 454, 457, 75 S. W. 727, 728, foreign railroad complying with Acts 1889, p. 43, may exercise power of eminent domain.

Syl. 7 (X, 582). Recovery on penal bond.

Approved in Dieckerhoff v. United States, 136 Fed. 547, 69 C. C. A. 255, under bond given under § 2899, Rev. St., government must prove amount of damages.

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Syl. 8 (X, 582). Amount of damages.

Approved in United States v. Dieckerhoff, 202 U. S. 312, 50 L. 1045, 26 Sup. Ct. 604, holding double the value of package ordered returned by collector is measure of recovery.

108 U. S. 462-466, 27 L. 793, MANNING v. CAPE ANN ISING GLASS ETC. CO.

Syl. 1 (X, 582). Public use of invention.

Approved in Bradley v. Eccles, 138 Fed. 914, 915, where device has been in public use for more than two years prior to filing petition for patent, patent is void.

Distinguished in Bryce Bros. Co. v. Seneca Glass Co., 140 Fed. 173, where article produced is perfect and machine is not, sale of product does not render use of machine a public use.

108 U. S. 466-477, 27 L. 789, DOWNTON v. YEAGER MILLING CO.

Syl. 1 (X, 583). Printed publication defeating patent.

Approved in Crown Cork etc. Co. v. Standard Stopper Co., 136 Fed. 204, 69 C. C. A. 519, prior publication will not negative novelty of invention unless it describes a complete invention or contains such a disclosure that any omission would ordinarily be supplied by one skilled in the art.

108 U. S. 477-490, 27 L. 795, GROSS v. UNITED STATES MORTGAGE CO.

Syl. 1 (X, 583). Examination of state court's opinion.

Approved in Carson v. Three States L. Co., 142 Fed. 894, on error to state court the opinion may be examined to ascertain what was decided.

108 U. S. 498-509, 27 L. 800, CONNECTICUT MUTUAL LIFE INS. CO. v. LUCHS.

Syl. 1 (X, 584). Insurable interest.

Approved in Mechanics' Nat. Bank v. Comins, 72 N. H. 16, 101 Am. St. Rep. 650, 55 Atl. 193, partner has insurable interest in life of copartner.

108 U. S. 514-522, 27 L. 808, VANCE v. VANCE.

Syl. 1 (X, 586). Recording documents in certain time.

Approved in Knights of Maccabees of the World v. Nitsch, 69 Neb. 375, 95 N. W. 627, statutes requiring documents to be recorded or making priority depend on order of recording are valid.

Syl. 2 (X, 586). Limitation of actions—Infants.

Approved in Schauble v. Schulz, 137 Fed. 396, 69 C. C. A. 581, minors are not excepted from Rev. Codes N. D. 1899, § 3491a, relating

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to statute of limitations; Boyle v. Boyle, 126 Iowa, 168, 101 N. W. 748, Iowa Code, § 3349, providing that claims against estates must be filed in twelve months after first publication of administrator's appointment, applies to infant creditors.

Syl. 3 (X, 586). General operation of statute of limitations.

Approved in Schauble v. Schulz, 137 Fed. 392, 69 C. C. A. 581, where person is given opportunity to be heard, he is not denied due process of law although statute considers past acts; Lamb v. Powder Riv. etc. Co., 132 Fed. 439, 442, 65 C. C. A. 570, 67 L. R. A. 558, statute may subject existing rights to limitation where none existed before but reasonable time must be given for the exercise of right of action; Pietsch v. Milbrath, 123 Wis. 670, 102 N. W. 346, unless statute of limitations by exception saves rights, it applies to all persons. See 111 Am. St. Rep. 459, note.

(X, 586.) Miscellaneous. Cited in dissenting opinion in Ayres v. Cone, 138 Fed. 786, majority holding creditors of bankrupt who desire to contest allowance of claim to other creditor must file objections in their own behalf.

108 U. S. 526-541, 27 L. 812, RUGGLES v. ILLINOIS.

Syl. 4 (X, 588). Construction of charter.

Approved in Houghton v. Payne, 194 U. S. 100, 48 L. 891, 24 Sup. Ct. 590, holding in construing classification of certain printed matter, plain language of statute prevailed over previous classification; Raritan Riv. R. R. Co. v. Middlesex etc. Co., 70 N. J. L. 744, 58 Atl. 336, where statute of state violates constitution, constitution is followed.

Syl. 2 (X, 587). Regulating charges of carriers.

Approved in Chicago v. Cicero, 210 Ill. 298, 71 N. E. 359, statutes regulating charges of public service corporations are valid.

108 U. S. 543-552, 27 L. 820, HAWLEY v. FAIRBANKS.

Syl. 3 (X, 589). Taxation by municipality.

Approved in Rose v. McKie, 145 Fed. 590, authority given town to contract debt carries with it authority to tax for the payment of such debt. See 105 Am. St. Rep. 216, note.

Syl. 4 (X, 590). Injunction against municipal officers.

Approved in Feely v. Bryan, 55 W. Va. 593, 47 S. E. 311, any writing charging a debt on property, though not a formal mortgage, is an equitable mortgage. See 105 Am. St. Rep. 217, note.

108 U. S. 553-556, 27 L. 819, MEATH v. PHILLIPS COUNTY.

Syl. 1 (X, 590). Indebtedness of county.

Approved in Folsom v. Greenwood Co., 130 Fed. 734, holding township subscribing for railroad bonds liable therefor and not the county.

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108 U. S. 556-560, 27 L. 811, EX PARTE TOM TONG.

Syl. 3 (X, 591). Nature of habeas corpus proceedings.

Approved in In re Jewett, 69 Kan. 838, 77 Pac. 570, one held under an order made without jurisdiction, as for contempt, may raise question as to jurisdiction on habeas corpus; dissenting opinion in Rush v. Buckley, 100 Me. 338, 61 Atl. 781, 70 L. R. A. 464, majority holding judge who issued warrant, arresting officer and complaining witness not liable for false imprisonment for proceeding under void statute.

Syl. 2 (X, 590). Civil and criminal proceedings distinguished.

Approved in Ex parte Caldwell, 138 Fed. 488, habeas corpus may be issued out of a federal court to inquire into the cause of a commitment under a civil as well as a criminal process; Ex parte White, 2 Cal. App. 728, 84 Pac. 243, holding habeas corpus is a civil proceeding; State v. Superior Court, 32 Wash. 146, 147, 72 Pac. 1041, on appeal from judgment denying habeas corpus an appeal bond is required, being a civil proceeding; State v. Chittenden, 127 Wis. 492, 107 N. W. 507, holding that writ of habeas corpus is original writ; dissenting opinion in United States v. Ju Toy, 198 U. S. 272, 49 L. 1048, 25 Sup. Ct. 644, majority holding one seeking entrance into this country is not denied due process of law, because decision on right to enter is rendered by executive officer.

108 U. S. 566-567, 27 L. 812, EX PARTE BALTIMORE ETC. R. R.

Syl. 2 (X, 592). Mandamus not writ of error.

See 98 Am. St. Rep. 892, note.

108 U. S. 567, 568, 27 L. 824, SCARBOROUGH v. PARGOUD.

Syl. 1 (X, 593). Writ of error.

Approved in Rutan v. Johnson, 130 Fed. 110, 64 C. C. A. 443, circuit court of appeals has no jurisdiction to review a judgment six months after entry.

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109 U. S. 3-62, 27 L. 835, CIVIL RIGHTS CASES.

Syl. 2 (X, 595). Fourteenth amendment—Civil rights.

Approved in United States v. Scott, 148 Fed. 433, holding void Comp. St. 1901, p. 3210, making it criminal for interstate carrier to discriminate against servants because of affiliation with unions; Kentucky v. Powers, 139 Fed. 457, upholding removal under Rev. St., § 641, of criminal prosecution where defendant discriminated in selection of jurors and by state decisions such rulings of trial court are not reviewable; United States v. Moore, 129 Fed. 635, denying federal jurisdiction to punish conspiracy to intimidate citizen to prevent him from organizing miners' union in state, in furtherance of which defendants assaulted such citizen.

Syl. 3 (X, 595). Civil rights—Impairment by individuals.

Approved in Barney v. New York, 193 U. S. 438, 439, 48 L. 740, 24 Sup. Ct. 502, denying federal jurisdiction on averment in bill to restrain railroad tunnel under city street that by its construction complainant, as abutting owner, is deprived of property without due process, where bill proceeds on theory that state law prohibits tunnel.

Syl. 4 (X, 596). Thirteenth amendment—Civil rights.

Approved in Clyatt v. United States, 197 U. S. 216, 49 L. 729, 25 Sup. Ct. 429, upholding Rev. St. §§ 1990, 5526, prohibiting peonage; Ex parte Riggins, 134 Fed. 406, 408, upholding indictment for conspiracy, by lynching negro accused of crime, to prevent him, because he was a negro, from having trial according to law.

Syl. 5 (X, 596). Civil rights—Refusal of accommodations.

Distinguished in Ex parte Riggins, 134 Fed. 415, persons taking negro from custody of sheriff and lynching him to prevent his trial according to law, deprive him of equal civil rights under thirteenth amendment.

109 U. S. 63-64, 27 L. 860, POINDEXTER v. GREENHOW.

(X, 597.) Miscellaneous. Cited in State v. Mortensen, 69 Neb. 385, 95 N. W. 834, state cannot be sued without consent. See 108 Am. St. Rep. 832, note.

109 U. S. 65-74, 27 L. 857, UNITED STATES v. GALE.

Syl. 2 (X, 597). Plea waives illegal grand jury.

Approved in Rodriguez v. United States, 198 U. S. 164, 49 L. 997, 25 Sup. Ct. 617, query whether objection to mode of selection of

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grand jurors can be taken by motion in arrest; Queenan v. Territory, 11 Okl. 271, 71 Pac. 221, 61 L. R. A. 324, known ground of disqualification to juror before or during progress of trial is waived by failing to raise objection till after verdict; Younger v. Hehn, 12 Wyo. 298, 109 Am. St. Rep. 991, 75 Pac. 445, regularity of method of drawing and summoning jury cannot be questioned on habeas corpus.

Distinguished in State v. Edwards, 68 S. C. 322, 47 S. E. 397, defendant pleading to indictment does not waive right to raise question, on motion in arrest, that indictment found by grand jury illegally drawn.

Syl. 3 (X, 597). Objections to qualifications of grand jurors.

Approved in In re Moran, 144 Fed. 605, denying habeas corpus where petitioner convicted on indictment brought by grand jury composed of disqualified persons; New Jersey v. Corrigan, 139 Fed. 764, denying right of removal of criminal case where defendant indicted after impanelment of grand jury which contained disqualified persons; State v. Taylor, 57 W. Va. 232, 50 S. E. 248, court has discretion to allow plea in bar to be withdrawn and dilatory plea entered; State v. Pine, 56 W. Va. 4, 48 S. E. 207, plea in bar is too late when tendered after demurrer and plea of not guilty.

109 U. S. 75-84, 27 L. 862, OLIVER v. RUMFORD CHEMICAL WORKS.

Syl. 1 (X, 598). Grant of exclusive use of patented article.

Approved in Bowers v. Lake Superior Contr. etc. Co., 149 Fed. 986, determining sufficiency of evidence to show that license authorizing use of patented invention was changed to permit its assignment; Hartman v. Park & Sons Co., 145 Fed. 368, upholding contracts by maker of proprietary medicine binding wholesalers to sell only at designated price and to retailers designated by him and between him, and retailers to sell only at certain price in consideration of being designated; Cortelyou v. Chas. Eneu Johnson & Co., 138 Fed. 117, owner of patent for rotary neostyle may sell machines under license restriction that they shall be used only with paper and ink made by licensor; Shepherd v. Deitsch, 138 Fed. 84, licensee, under license to manufacture and vend patented article, reserving right to license another and binding patentee to prosecute infringers, is not necessary party complainant to suit for infringement.

Syl. 2 (X, 599). Patents—License not transferable.

Approved in In re McBride, 132 Fed. 288, where contract between author and publisher provides that it shall not be transferred without author's consent, and on violation of provisions copyrights shall revert to author, copyrights cannot be sold by publisher's bankruptcy trustee.

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109 U. S. 84-90, 27 L. 865, PORTER v. LAZEAR.

Syl. 1 (X, 599). Bankruptcy—Dower right.

Approved in In re McKenzie, 142 Fed. 386, 388, affirming 132 Fed. 989, Bankr. Act 1898, § 8, does not confer dower right, but makes right of bankrupt's widow to dower dependent on local law.

109 U. S. 99-103, 27 L. 870, KING v. GALLUN.

Syl. 2 (X, 600). Patentable novelty—Judicial notice.

Approved in Baker v. Duncombe Mfg. Co., 146 Fed. 746, Baker patents No. 726,812 and No. 736,346, for process of treating coffee, are void in view of prior art.

109 U. S. 104-106, 27 L. 872, GREEN COUNTY v. CORMESS.

Syl. 2 (X, 601). Municipal aid—Consolidated railroad.

Approved in Gamble v. Rural etc. School Dist., 146 Fed. 117, where at time of amendment of 1888 to Iowa Code, § 2114, providing that holder of negotiable paper procured by fraud could only recover amount paid therefor, school bond sold by innocent holder for less than par to one who knew of fraudulent character, statute did not affect holder.

109 U. S. 132-138, 27 L. 883, NEWMAN v. ARTHUR.

Syl. 1 (X, 606). Tariff—Commercial usage of words.

Approved in Waddell v. United States. 135 Fed. 212, articles of hone stone used in polishing marble and lithographic stones are not free of duty as "hones" under Tariff Act 1897, par. 574, § 2, Free List; United States v. Bartram, 131 Fed. 835, 65 C. C. A. 557, construing expression "testing by polariscope" as used in Tariff Act 1897, par. 209, sched. E, § 1.

109 U. S. 143-146, 27 L. 885, UNITED STATES v. FISHER.

Syl. 2 (X, 607). Statutes—Legislative intent.

Approved in Parshall v. United States, 147 Fed. 436, railway postal clerk cannot recover on implied contract for expenses of bed and board while on regular run in addition to fixed salary.

109 U. S. 150-162, 27 L. 888, HOVEY v. McDONALD.

Syl. 1 (X, 608). Appeal—Decree confirming auditor's report.

Approved in Bennett v. Thorne, 36 Wash. 262, 78 Pac. 939, 68 L. R. A. 113, in proceedings by receiver to assess stockholders, decree fixing amount of bank's debts and determining creditor's right to assessment is final and appealable.

Distinguished in Heinze v. Butte etc. Min. Co., 139 Fed. 338, 64 C. C. A. 15, neither order approving monthly reports of receiver nor one directing him to pay expenses, made before final account, is final appealable order.

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Syl. 1 (X, 608). Appeal as stay.

Approved in First Nat. Bank v. State Nat. Bank, 131 Fed. 431, 65 C. C. A. 414, where appeal perfected under Bankr. Act, § 25a, from judgment allowing or rejecting debt, district court cannot entertain motion for rehearing pending appeal.

Syl. 3 (X, 609). Amendment after appeal.

Approved in Southern Pac. Co. v. Western Pac. Ry. Co., 144 Fed. 204, applying rule where injunction pendente lite granted; State v. Superior Court, 39 Wash. 121, 80 Pac. 1110, 109 Am. St. Rep. 862, 1 L. R. A. (N. S.) 554, arguendo.

Syl. 7 (X, 609). Appeal from injunction order as stay.

Approved in Elliott v. Kuzek, 2 Alaska, 591, where judgment of dismissal entered after trial on merits and preliminary injunction dissolved, appeal and supersedeas bond do not abate suit on injunction bond; State v. Dearing, 180 Mo. 66, 67, 79 S. W. 458, where circuit court, on merits, dissolved injunction and dismissed bill, it could continue injunction in force pending appeal; State v. Superior Court, 39 Wash. 117, 118, 109 Am. St. Rep. 862, 80 Pac. 1109, 1 L. R. A. (N. S.) 554, pending appeal from injunction restraining continuance of shooting-gallery, defendant not entitled to supersedeas pending appeal.

109 U. S. 162-168, 27 L. 892, LOUIS v. BROWN TOWNSHIP.

Syl. 4 (X, 610). Decree concludes codefendants.

Approved in Georgia R. R. Co. v. Wright, 124 Ga. 603, 53 S. E. 254, where on judgment for plaintiff codefendant refused to join in appeal, and judgment was reversed, codefendant estopped in suit against other defendant as to all matters which might have been raised in first suit; Sioux City v. Chicago etc. Ry. Co., 129 Iowa, 702, 106 N. W. 186, arguendo.

109 U. S. 174-176, 27 L. 894, EX PARTE PENNSYLVANIA.

Syl. 2 (X, 612). Prohibition does not correct error.

See 111 Am. St. Rep. 956, note.

109 U. S. 180-185, 27 L. 898, WINTHROP IRON CO. v. MEEKER.

Syl. 1 (X, 612). Final appealable decree.

Approved in Clement v. Ireland, 138 N. C. 139, 50 S. E. 571, decree confirming foreclosure sale is final, though subsequent pleadings, whereby defendant sought to charge plaintiff with rents of land, allowed to be filed; Marquam v. Ross, 47 Or. 380, 78 Pac. 700, decree as prayed for on bill to redeem from foreclosure of trust deed is final and appealable, though it provided for accounting of rents.

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109 U. S. 189-194, 27 L. 901, SNYDER v. MARKS.

Syl. 1 (X, 614). Remedy for recovery of illegal revenue taxes.

Approved in Christie St. Com. Co. v. United States, 129 Fed. 508, remedy provided by Rev. St., § 3226, by appeal to internal revenue commissioner, is exclusive.

109 U. S. 194-200, 27 L. 903, CRAGIN v. LOVELL.

Syl. 1 (X, 614). Bill to set aside default—Knowledge.

Approved in Flannigan v. Chapman etc. Co., 144 Fed. 374, where complainant purchased land sold for taxes several years after decree confirming tax sale, bill to cancel such decree filed six years after decree not averring he did not know of matter alleged in bill in time to assert same in confirmation proceedings, is defective.

109 U. S. 205-211, 27 L. 907, BOOTH v. TIERNAN.

Syl. 1 (X, 615). Conclusiveness of findings.

Approved in Streeter v. Sanitary Dist. of Chicago, 133 Fed. 126, 66 C. C. A. 190, following rule.

109 U. S. 221-229, 27 L. 916, BOARD OF LIQUIDATION v. LOUISVILLE ETC. R. R. CO.

(X, 616.) Miscellaneous. Cited in Ridge v. Manker, 132 Fed. 601, 67 C. C. A. 596, as to right of appellate court to consider matters outside record occurring since decree to prevent miscarriage of justice.

109 U. S. 229, 230, 27 L. 914, KNOX COUNTY COURT v. UNITED STATES.

(X, 616.) Miscellaneous. Cited in Rose v. McKie, 145 Fed. 590, it is no defense to mandamus to compel town officers to perform statutory duties toward payment of judgment against town that such duties do not include all acts requisite to full satisfaction of judgment.

109 U. S. 238-243, 27 L. 920, ARNSON v. MURPHY.

Syl. 3 (X, 619). Remedy for recovery of illegal taxes exclusive.

Distinguished in Walker v. Globe Newspaper Co., 140 Fed. 310, right to sue at law for damages for infringement of copyright not impliedly taken away by remedies given by Rev. St., §§ 4965, 4970.

109 U. S. 244-258, 27 L. 922, LOUISVILLE ETC. R. R. CO. v. PALMES.

Syl. 3 (X, 621). Facts admitted by demurrer.

See 97 Am. St. Rep. 833, note.

Syl. 4 (X, 621). Tax exemptions of old railroad.

Approved in Lake Drummond Canal etc. Co. v. Commonwealth, 103 Va. 355, 49 S. E. 512, corporation created under Code, § 1234,

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on purchase of property of other corporation on foreclosure sale, cannot claim tax immunity granted to original corporation.

Syl. 5 (X, 622). Binding effect of state decisions.

Approved in Columbia Ave. Sav. Fund etc. Co. v. Dawson, 130 Fed. 166, state decision adjudging void contract of city for payment of hydrant rentals not binding on federal courts.

109 U. S. 258-267, 27 L. 927, UNITED STATES v. WALKER.

Syl. 3 (X, 623). Action by administrator de bonis non.

Approved in Morrow v. Fidelity etc. Co., 100 Md. 263, 108 Am. St. Rep. 410, 59 Atl. 736, administrator de bonis non cannot sue surety on bond of deceased administrator who preceded him for devastavit committed by him; McCreery v. Western Carolina Bank, 55 W. Va. 670, 47 S. E. 893, certificates of bank stock in name of A taken up by bank and reissued in name of his executor, and by latter pledged in due course of administration, cannot be recovered from bank by administrator de bonis non. See 108 Am. St. Rep. 421, 429, note.

Distinguished in Conway v. Carter, 11 N. M. 432, 433, 68 Pac. 943, 944, where allegations in suit against sureties of deceased administrator to recover proceeds of insurance policy collected by administrator are admitted, court may render judgment on pleadings.

109 U. S. 278-285, 27 L. 932, GRACE v. AMERICAN CENTRAL INS. CO.

Syl. 2 (X, 625). Contracts—Construction of ambiguous words.

Approved in dissenting opinion in Ward v. Foley, 141 Fed. 368, majority construing contract to sell all interest in 320 acres of land at $14 per acre as providing for sale at rate of $14 for each acre in entire tract; dissenting opinion in Atlas Red Co. v. New Zealand Ins. Co., 138 Fed. 511, majority construing "loss payable clause" in fire policy.

Syl. 3 (X, 626). Custom to vary written contract.

Approved in Lillard v. Kentucky Dist. etc. Co., 134 Fed. 173, 182, 67 C. C. A. 74, evidence of custom is admissible to show contract to deliver distillery slop at cattle-feeding lot contemplated lot to be supplied with suitable pens and troughs; Wisconsin etc. Ry. Co. v. Phoenix Ins. Co., 123 Wis. 319, 101 N. W. 705, though agents whenever they received notice of cancellation of policies made office record thereof and delivered substitute policies to insured, direction to agents to keep up insurance to original amount not implied.

Syl. 4 (X, 626). Federal jurisdiction must affirmatively appear.

Approved in International etc. Tel. Co. v. Fessenden, 131 Fed. 492, denying jurisdiction over suit for infringement of patent where bill

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shows defendant nonresident of district, and it is not alleged infringement committed in district; Dodd v. Louisville Bridge Co., 130 Fed. 193, denying removal of suit by Indiana corporation against corporation incorporated in several states, including Illinois and Indiana, and formed by consolidation of corporation of said states; Illinois Cent. Ry. Co. v. Jones, 118 Ky. 165, 80 S. W. 485, where removal petition shows removable controversy, any issue as to truth of facts stated in petition is determinable by federal court.

Syl. 5 (X, 627). Lack of jurisdiction noticed sua sponte.

Approved in Kansas City etc. Ry. Co. v. Prunty, 133 Fed. 15, 66 C. C. A. 163, applying rule to circuit court of appeals.

(X, 625.) Miscellaneous. Cited in Thompson v. Stalmann, 131 Fed. 811, where removal petition averred controversy between diverse citizens and amount exceeded $2,000, circuit court to which removal had could permit amendment to petition to disclose citizenship.

109 U. S. 285-287, 27 L. 936, LOUISIANA v. MAYOR OF NEW ORLEANS.

Syl. 2 (X, 628). Contract—Impairment of obligation.

Approved in Wilson v. Head, 184 Mass. 519, 69 N. E. 318, Stat. 1890, p. 479, permitting recovery of money paid on wagering contracts did not give nondivestable right; Gaffney v. Jones, 39 Wash. 589, 81 Pac. 1059, Laws 1897, p. 52, providing limitation on judgments is not void as impairing obligation of contracts as applied to judgment in tort rendered prior to its passage.

109 U. S. 341-356, 27 L. 956, BERNARD'S TOWNSHIP v. STEBBINS.

Syl. 1 (X, 631). Reformation of city contract.

Approved in Bronk v. Standard Mfg. Co., 141 Mich. 685, 105 N. W. 35, though charter provided that no city real property should be disposed of unless by ordinance or resolution of council, lease executed pursuant to resolution reformed.

Syl. 3 (X, 632). Federal jurisdiction—Colorable assignment.

Approved in Woodside v. Vasey, 142 Fed. 619, denying jurisdiction over suit against directors of corporation to enforce claims against corporation which were assigned to plaintiff, and none of claims is within jurisdictional amount.

109 U. S. 357-371, 27 L. 962, WARNER v. CONNECTICUT MUT. L. INS. CO.

Syl. 2 (X, 633). Devise for life with power to encumber.

Approved in Kirkman v. Wadsworth, 137 N. C. 458, 49 S. E. 964, where trustee having power to sell land in fee by written direction of cestui que trust for life joins with her in conveyance for valuable

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consideration, it is valid execution of power, though no written direction given.

109 U. S. 371-381, 27 L. 966, FLASH v. CONN.

Syl. 2 (X, 634). Stockholder's liability enforceable in other state.

Approved in Corry v. Baltimore, 196 U. S. 477, 49 L. 562, 25 Sup. Ct. 297, upholding Md. Code Pub. Gen. Laws, art. 81, imposing personal liability on stockholders for taxes on stock, as applied to nonresident stockholders; Knickerbocker Trust Co. v. Myers, 133 Fed. 767, holding void Act Md. 1904, p. 579, taking away right of individual creditor to enforce stockholder's liability and substituting therefor suit in equity for benefit of all creditors; Heinberg Bros. v. Thompson, 47 Fla. 165, 37 So. 72, affidavits made before but filed after issuance of corporation's charter that ten per cent of capital subscribed and paid, do not relieve stockholder's liability; Putnam v. Misochi, 189 Mass. 423, 109 Am. St. Rep. 648, 75 N. E. 957, where stockholder in Maine corporation was there made to pay judgment against it under Maine statute, he could sue other stockholders in Massachusetts for contribution; Ross v. Kansas City etc. Ry. Co., 31 Tex. Civ. 587, 79 S. W. 627, fact that railroad sued under statute of foreign state prescribing limitation for enforcement of remedy given thereby was incorporated in state other than that of statute is immaterial; dissenting opinion in McClaine v. Rankin, 197 U. S. 165, 166, 49 L. 707, 708, 25 Sup. Ct. 410, majority holding personal liability of national bank stockholders for debts not contractual liability within limitation prescribed by Wash. Bal. Code, § 4800, subd. 3; Miller v. Clifford, 133 Fed. 885, 67 C. C. A. 52, arguendo. See 103 Am. St. Rep. 372, note.

Syl. 5 (X, 636). Stockholder's liability—Corporation's bankruptcy.

Approved in Andrews v. O'Reilly, 25 R. I. 235, 55 Atl. 690, declaration in action against stockholder on judgment against corporation alleging that latter insolvent need not allege issuance of execution; Bennett v. Thorne, 36 Wash. 265, 78 Pac. 940, 68 L. R. A. 113, action against bank stockholders for additional liability accrues on insolvency of bank; Harrison v. Remington Paper Co., 140 Fed. 388, arguendo.

109 U. S. 385-398, 27 L. 971, MILLER v. MAYOR OF NEW YORK.

Syl. 1 (X, 637). Waters—Congressional power over obstructions.

Approved in United States v. Union Bridge Co., 143 Fed. 386, upholding power of United States to compel alteration of bridge alleged to obstruct navigation; Kansas City etc. R. R. Co. v. Wiygul, 82 Miss. 231, 33 So. 967, 61 L. R. A. 578, railroad constructing bridge over navigable stream under state authority may make repairs thereto; Seibert v. Missouri Pac. Ry. Co., 188 Mo. 672, 87 S. W. 999, 70 L. R. A. 72, erection of safety gates at railroad crossing not nuisance

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where machinery operating same left unobstructed space in highway. See 107 Am. St. Rep. 221, 222, notes.

Syl. 2 (X, 638). Congressional statutes—Contingencies.

Approved in United States v. Union Bridge Co., 143 Fed. 387, upholding power of United States to compel alteration of bridge alleged to obstruct navigation; Green Co. v. Shortell, 116 Ky. 134, 75 S. W. 257, upholding order of county court directing clerk to make subscription to railroad stock for county on terms specified in order submitting question to vote.

Distinguished in United States v. Choctaw etc. R. R. Co., 3 Okl. 498, 41 Pac. 760, under Act Cong. Feb. 18, 1888, approval of Secretary of Interior as to location of railroad is not necessary prerequisite to location of line.

109 U. S. 398-401, 27 L. 976, MEMPHIS GAS CO. v. SHELBY CO.

Syl. 1 (X, 639). License tax on franchise as exemption.

Approved in New York v. State Board of Tax Commrs., 199 U. S. 42, 50 L. 77, 25 Sup. Ct. 715, upholding special franchise tax imposed by N. Y. Laws 1899, c. 712.

Syl. 2 (X, 639). Unjust taxation—Federal Constitution.

Approved in St. Louis etc. Ry. Co. v. Davis, 132 Fed. 634, upholding assessment of railroad property by railroad assessment board of Arkansas, pursuant to state statutes. See 105 Am. St. Rep. 703, note.

Syl. 3 (X, 639). Tax exemption not implied.

Approved in American Smelting etc. Co. v. People, 34 Colo. 253, 82 Pac. 535, laws requiring foreign corporations to pay filing fee as condition precedent to doing business do not exempt such corporations from occupation tax; Rochester v. Rochester Ry. Co., 182 N. Y. 113, 74 N. E. 957, 70 L. R. A. 773, lessee of railroad exempt under statute from contribution for new pavements is liable for expense of new pavements under later statute.

109 U. S. 401-407, 27 L. 977, GILFILLAN v. UNION CANAL CO.

Syl. 1 (X, 640). Rights of majority bondholders.

Approved in Cowell v. City Water Supply Co., 130 Iowa, 674, 105 N. W. 1017, where reorganization agreement provided that plan should be binding on all bondholders unless majority thereof dissented within thirty days, and petition of dissenter showed majority did not dissent, he was bound.

109 U. S. 408-421, 27 L. 979, FAY v. CORDESMAN.

Syl. 4 (X, 641). Patent for combination—Material parts.

Approved in National Cash Register Co. v. Union etc. Mach. Co., 143 Fed. 344, construing Koch patent No. 398,625, for cash indicator

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and recorder; American Can Co. v. Hickmott etc. Co., 137 Fed. 87, Jordan patent No. 436,792, for can-body making machine, not infringed by machine of Eldridge patent No. 712,998; Rembert etc. Compress Co. v. American Cotton Co., 129 Fed. 369, 64 C. C. A. 25, Rembert patent No. 441,022, for method of baling cotton, limited and not infringed by mechanism of Graves patent No. 473,144.

109 U. S. 421-426, 27 L. 984, FEIBELMAN v. PACKARD.

Syl. 1 (X, 642). Removal—Suit against marshal.

Approved in Bryant Bros. Co. v. Robinson, 149 Fed. 324, suit against postmaster of certain place for relief against official acts performed by him under orders of postmaster general, is removable under 1 Rev. St. Supp. 611.

Syl. 2 (X, 643). Bankruptcy—Seizure of goods.

Approved in In re Knopf, 144 Fed. 253, following rule.

109 U. S. 426-431, 27 L. 986, SMITH v. McNEAL.

Syl. 1 (X, 643). Dismissal for want of jurisdiction—Limitations.

Approved in Atlanta etc. Ry. Co. v. Wilson, 119 Ga. 787, 47 S. E. 369, where suit brought in court of competent jurisdiction over subject matter and after bar of statute same is dismissed for want of jurisdiction over person, action may be renewed within six months in court of competent jurisdiction; Fay v. Costa, 2 Cal. App. 247, 83 Pac. 278, arguendo.

109 U. S. 432-440, 27 L. 988, BAILEY v. UNITED STATES.

Syl. 1 (X, 644). Assignment of government claims.

Approved in Nutt v. Knut, 200 U. S. 20, 50 L. 353, 26 Sup. Ct. 216, holding void part of contract for prosecution of claim against United States making compensation for services rendered thereunder lien on claim and on any moneys or drafts issued thereon.

109 U. S. 440-445, 27 L. 990, JACKSON v. ROBY.

Syl. 1 (X, 645). Miners' rules.

Approved in Butte City Water Co. v. Baker, 196 U. S. 126, 49 L. 412, 25 Sup. Ct. 211, upholding supplementary regulations relating to mineral locations prescribed by state in addition to congressional regulations. See 104 Am. St. Rep. 690, note.

Syl. 2 (X, 645). Assessment work—Several mining claims.

Approved in Willitt v. Baker, 133 Fed. 949, in suit under Rev. St., § 2326, by adverse claimant to determine right of possession of mining claim, defendant to get decree where plaintiff's case fails must show assessment work for each year.

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Syl. 3 (X, 645). Assessment work—Claims held in common.

Distinguished in Hain v. Mattes, 34 Colo. 351, 83 Pac. 129, work done in tunnel may be applied as assessment work on mining location though continuous strip from portal of tunnel to boundary of location not owned.

Syl. 4 (X, 646). Adverse claims to mines—Neither doing work.

Approved in Wilson v. Freeman, 29 Mont. 475, 75 Pac. 86, 68 L. R. A. 833, following rule; Willitt v. Baker, 133 Fed. 948, where locators were at work on December 31st and left tools on claim so as to resume work in morning, one making relocation in night acquired no rights; Brown v. Gurney, 201 U. S. 190, 50 L. 721, 26 Sup. Ct. 509, arguendo.

109 U. S. 446-468, 27 L. 992, CUNNINGHAM v. MACON ETC. R. R. CO.

Syl. 2 (X, 646). Suability of state.

Approved in Berman v. Minnesota etc. Society, 93 Minn. 127, 100 N. W. 732, Minnesota State Agricultural Society is immune from suits for torts of servants; State v. Mortensen, 69 Neb. 385, 95 N. W. 834, denying jurisdiction of action against members of board of public lands and buildings to compel specific performance of contract for leasing of convict labor.

Syl. 3 (X, 647). When state suable.

Approved in De Laittre v. Board of Commrs., 149 Fed. 802, refusing to compel state land commissioners to issue patents to state lands; Smith v. Alexander, 146 Fed. 108, refusing preliminary injunction in suit for injunction against state commissioners to enforce contract between state and complainant according to latter's construction thereof, correctness of which is denied by defendants. See 108 Am. St. Rep. 837, note.

Syl. 4 (X, 648). Suit against state officers.

Approved in Buchanan v. State Treasurer, 68 S. C. 420, 47 S. E. 686, denying mandamus to compel state comptroller to issue circuit judge's salary warrant where there is no statute fixing salary and no appropriation made therefor. See 108 Am. St. Rep. 832, 840, notes.

109 U. S. 478-485, 27 L. 1003, RANDALL v. BALTIMORE ETC. R. R. CO.

Syl 1 (X, 650). Direction of verdict.

Approved in Riley v. Louisville etc. R. Co., 133 Fed. 906, 66 C. C. A. 598, following rule; Woodward v. Chicago etc. Ry. Co., 145 Fed. 578, applying rule in action against railroad for damages by fire through locomotive sparks; Parks v. Southern Ry. Co., 143 Fed. 277, upholding refusal to permit plaintiff to take nonsuit and permitting direction of verdict for defendant; Swift v. Johnson, 138 Fed. 875, where action

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for death of minor son is prosecuted for sole benefit of father, who abandoned son during minority, recovery limited to nominal damages; Minahan v. Grand Trunk etc. Ry. Co., 138 Fed. 47, 70 C. C. A. 463, reversing directed verdict for defendant in action for injuries to passenger by derailment of car as it passed over defective switch where evidence conflicted as to cause of defect; Camden etc. Ry. Co. v. Rice, 137 Fed. 328, 69 C. C. A. 656, upholding refusal to direct verdict for defendant in action for injuries to street-car passenger while attempting to alight; International Text Book Co. v. Heartt, 136 Fed. 133, 69 C. C. A. 127, applying rule in action against corporation for slander committed by its agent who uttered words when not engaged in performance of duties; Neeley v. Southwestern etc. Oil Co., 13 Okl. 362, 372, 75 Pac. 539, 542, 64 L. R. A. 145, reversing nonsuit in action for personal injuries to servant in factory caused by defective appliances; Gunn v. Union R. R. Co., 27 R. I. 327, 329, 62 Atl. 121, 122, upholding Gen. Laws 1896, c. 251, § 11, authorizing supreme court to direct judgment without further trial by jury; Woolf v. Washington etc. Nav. Co., 37 Wash. 503, 79 Pac. 999, not presumed that one killed at railroad crossing exercised due care where attendant facts show he did not.

Syl. 4 (X, 653). Assuming risks of fellow-servant's negligence.

Approved in Chicago etc. Ry. Co. v. Riley, 145 Fed. 140, location of switch-stand in railroad-yard between two tracks so close to one that switch-handle would strike steps of cars on other track did not involve question of negligence to be passed on by jury; American Bridge Co. v. Seeds, 144 Fed. 608, where scaffolding used for rebuilding bridge contained loose planks and servant employed on it was knocked off by tackle on account of inopportune signal of foreman to engineer, company not liable; Southern Ry. Co. v. Logan, 138 Fed. 728, where conductor in switchyards taking diner to Y. placed engine in rear and only light on car was his lantern, which he held on platform, and collided with engine, he cannot recover; Riley v. Louisville etc. R. Co., 133 Fed. 907, 66 C. C. A. 598, where railroad-yards contained numerous spring rail frogs, switchman injured by having foot caught in one of their excavations assumed risk; Britton v. Central Un. Tel. Co., 131 Fed. 847, 65 C. C. A. 598, where telephone company did not inspect poles before climbed by lineman, latter assumed risks incident to climbing poles after such tests as his judgment indicated necessary.

Distinguished in McGill v. Southern Pac. Co., 4 Ariz. 124, 33 Pac. 822, section foreman is not fellow-servant of conductor of train on which he is carried to work.

Syl. 5 (X, 654). Who are fellow-servants.

Approved in Southern Pac. Co. v. McGill, 5 Ariz. 41, 44 Pac. 303, section foreman and conductor of work train working under common supervisor in clearing track are fellow-servants; Chaddick v. Lindsay, 5 Okl. 627, 49 Pac. 943, denying recovery to brakeman for injuries caused by trunk thrown near track at place where there was no platform.

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109 U. S. 485-504, 27 L. 1006, ELLIS v. DAVIS.

Syl. 4 (X, 657). Equity court's probate jurisdiction.

Approved in O'Callaghan v. O'Brien, 199 U. S. 107, 50 L. 109, 25 Sup. Ct. 727, denying circuit court's jurisdiction over suit to set aside probate of will in state court. See 106 Am. St. Rep. 643, note.

109 U. S. 504-512, 27 L. 1012, TOWNSEND v. LITTLE.

Syl. 1 (X, 659). Possession as notice of title.

Approved in United States v. Detroit Timber etc. Co., 200 U. S. 333, 50 L. 504, 26 Sup. Ct. 282, purchaser from patentees for value. without notice of entryman's fraud, is bona fide purchaser under timber act of 1878, though he acquired interest in lands under contract for standing timber before patents issued; Reed v. Munn, 148 Fed. 756, refusing to impute to corporation acquiring legal title to realty notice of outstanding equitable claim on part of director; United States v. Detroit Timber etc. Co., 131 Fed. 675, where vendor presents conveyances to himself prima facie valid and assures purchaser his title thereunder is perfect, buyer is under no duty to investigate further in absence of circumstances suggesting investigation; Stockton v. National Bank, 45 Fla. 600, 34 So. 900, where one who had been grantor's tenant before giving of unrecorded deed attorned to grantee at time it was given and remained in possession until attachment, possession is not notice to attaching creditor. See 104 Am. St. Rep. 351, note.

Syl. 3 (X, 659). Specific and general statutory provisions.

Approved in Kepner v. United States, 195 U. S. 125, 49 L. 123, 24 Sup. Ct. 797, Act 1902, § 5, for temporary civil government of Philippines, took away government's right to appeal from acquittal in court of first instance; Bealmear v. Hutchins, 134 Fed. 262, Rev. St. N. C. 1837, c. 42, § 1, casts burden on one claiming under such statute to show on face of grant itself that land was at time "vacant and unsurveyed"; Thomas v. Evans, 73 Ohio St. 146, 76 N. E. 863, Rev. St. 1906, § 5727, giving probate court jurisdiction to issue habeas corpus, is superseded as to extradition cases by Rev. St. 1906, § 97; Carpenter v. Russell, 13 Okl. 282, 73 Pac. 932, Stat. 1893, c. 18, art. 13, relating to appeals, is not inconsistent with act extending jurisdiction of probate court; Atchison etc. R. R. Co. v. Haynes, 8 Okl. 585, 58 Pac. 741, Stat. 1893, § 5791, authorizing county commissioners to levy school tax, is not repealed by Sess. Laws 1895, p. 210, amending general revenue laws; Buchanan v. State Treasurer, 68 S. C. 415, 47 S. E. 684, construing salary reduction act of 1893 and general appropriation act of same year with reference to salary of circuit judges.

109 U. S. 513-521, 27 L. 1015, UNITED STATES v. JONES.

Syl. 1 (X, 660). Eminent domain incident of sovereignty.

Approved in Jones v. North Georgia Elec. Co., 125 Ga. 624, 54 S. E. 88, upholding Acts 1897, p. 68, conferring on owners of water powers authority to exercise right of eminent domain; Hollister v. State, 9

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Idaho, 15, 71 Pac. 543, Idaho admission act does not restrict right of eminent domain over lands granted to state by said act; dissenting opinion in Western Union Tel. Co. v. Pennsylvania R. R. Co., 195 U. S. 583, 49 L. 328, 25 Sup. Ct. 133, majority holding Rev. St., § 5263, did not give telegraph companies right to condemn railway right of way for their lines.

Syl. 2 (X, 660). Eminent domain—Proceedings to determine compensation.

Approved in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 254, 49 L. 468, 25 Sup. Ct. 251, upholding removability of proceeding in eminent domain authorized by Ky. St., §§ 835-839, where requisite diversity of citizenship exists.

109 U. S. 522-527, 27 L. 1018, THOMAS v. BROWNVILLE ETC. R. R. CO.

Syl. 1 (X, 661). Corporation's contract with director.

Approved in Burns v. Cooper, 140 Fed. 277, sale by guardian of ward's realty under order of court may be set aside by ward if guardian procures sale in order to get title himself and indirectly becomes purchaser; Young v. City of Mankato, 97 Minn. 6, 105 N. W. 970, 3 L. R. A. (N. S.) 849, freeholders appointed to draft city charter cannot employ one of their members as counsel to prepare charter and give advice with reference thereto; Barnes v. Lynch, 9 Okl. 187, 59 Pac. 1007, setting aside transaction whereby officers of corporation divided assets among themselves and merged property of corporation in individual estates.

Distinguished in Attalla Iron Ore Co. v. Virginia etc. Coke Co., 111 Tenn. 532, 534, 535, 77 S. W. 775, 776, where managers of corporation secretly agreed with another to form new corporation, in which they were to have controlling interest, and then entered into contract with new corporation on behalf of old but without knowledge of directors, contract annulled at suit of directors.

109 U. S. 527-549, 27 L. 1020, CANADA SOUTHERN R. R. CO. v. GEBHARD.

Syl. 2 (X, 662). Impairment of bondholder's obligation.

Approved in Cochran v. Pittsburg etc. R. Co., 150 Fed. 683, bondholder may foreclose mortgage without majority bondholders requesting suit by trustee where bill shows trustee antagonistic to foreclosure by reason of interest in second mortgage; Cowell v. City Water Supply Co., 130 Iowa, 675, 105 N. W. 1017, where corporation reorganization agreement provided plan should bind all bondholders unless majority dissented within thirty days, and petition by dissenter showing majority did not dissent, he was bound.

Syl. 5 (X, 663). Jurisdiction over foreign corporations.

Approved in Brown v. Equitable Life Assur. Soc., 142 Fed. 843, nonresident stockholder in New York insurance company is bound by laws

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N. Y. 1892, p. 1958, § 56, prohibiting appointment of receiver for or directing accounting by insurance company unless on approval of attorney general; Territory v. Baker, 12 N. M. 459, 78 Pac. 625, denying mandamus to compel judge to assume jurisdiction over suit against foreign railroad on whose president process served while he was on train en route through state.

109 U. S. 550-555, 27 L. 1028, SULLIVAN v. IRON SILVER MIN. CO.

(X, 664.) Miscellaneous. Cited in Worthen v. Sidway, 72 Ark. 225, 79 S. W. 781, valid mining location is property capable of being transferred.

109 U. S. 556-572, 27 L. 1030, EX PARTE CROW DOG.

Syl. 3 (X, 665). Territorial district court's jurisdiction.

Approved in Brown v. United States, 146 Fed. 976, larceny committed on Indian reservation in Oklahoma by one not Indian is within jurisdiction of territorial district courts exercising jurisdiction vested in federal courts; Gay v. Thomas, 5 Okl. 12, 46 Pac. 582, upholding act of 1895, providing for taxation of cattle in unorganized county or reservation in county to which such county is attached for judicial purposes; Robinson v. Peru Plow etc. Co., 1 Okl. 149, 31 Pac. 990, construing words in petition incorrectly describing action as brought in federal side of territorial court as surplusage.

Syl. 4 (X, 665). Statutory construction—Repealed statutes.

Approved in Goodson v. United States, 7 Okl. 139, 140, 54 Pac. 430, upholding jurisdiction of territorial court exercising federal jurisdiction over prosecution for adultery committed on Indian reservation.

Syl. 5 (X, 666). What is "Indian county."

Approved in Brown v. United States, 146 Fed. 977, larceny committed on Indian reservation in Oklahoma by one not Indian is within jurisdiction of territorial district court exercising federal jurisdiction; Herd v. United States, 13 Okl. 516, 75 Pac. 292, upholding jurisdiction of territorial courts exercising federal jurisdiction over larceny committed on Indian reservation; Goodson v. United States, 7 Okl. 131, 54 Pac. 427, upholding jurisdiction of territorial court exercising federal jurisdiction over prosecution for adultery committed on Indian reservation.

Syl. 8 (X, 667). Special law not repealed by general.

Approved in Guthrie v. Sparks, 131 Fed. 449, 65 C. C. A. 427, Ky. St. 1894, § 1882, conferring power on county fiscal courts to levy taxes for county purposes, except railway bond debts, not repealed by § 1839.

(X, 665.) Miscellaneous. Cited in State v. Smokalem, 37 Wash. 95, 79 Pac. 605, upholding state court's jurisdiction over homicide committed by Indian on another in territory previously embraced in Puyallup reservation.

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109 U. S. 573-577, 27 L. 1036, YOUNG v. DUVALL.

Syl. 1 (X, 668). Conclusiveness of notarial certificate.

Approved in Adams v. Smith, 11 Wyo. 222, 70 Pac. 1047, holding evidence insufficient to show wife in signing mortgage did not understand it to be mortgage, to impeach notarial certificate.

109 U. S. 578-607, 27 L. 1038, PROVIDENCE ETC. N. Y. S. S. CO. v. HILL MFG. CO.

Syl. 4 (X, 669). Shipping—Proceeding to limit liability.

Approved in Dowdell v. United States District Court, 139 Fed. 445, where limitation of liability proceedings terminated by final decree, court cannot reopen case to allow other claimants not appearing therein to come and prove claims.

Syl. 5 (X, 669). Shipping—Limited liability act—Rules.

Approved in The Sacramento, 131 Fed. 374, petition in admiralty to limit liability failing to state facts and circumstances, by reason of which exemption claimed, as required by rule 56, is sufficient to entitle petitioner to contest fault of vessel.

109 U. S. 608-617, 27 L. 1049, ROBERTSON v. PICKERELL.

Syl. 1 (X, 671). Law governing realty transfers.

Approved in Succession of Hasling, 114 La. 296, 297, 38 So. 175, validity of will made in Louisiana by citizen thereof bequeathing realty in Mississippi tested by laws of latter; Knight v. Hollings, 73 N. H. 499, 63 Atl. 40, arguendo.

Syl. 3 (X, 571). Credit given foreign judgments.

Approved in In re Box's Will, 127 Wis. 270, 106 N. W. 1065, county court has no jurisdiction to admit to probate will which had been probated in Illinois and copy of will and record of probate not authenticated as required by statute.

Syl. 6 (X, 671). Estoppel by deed.

Approved in Levi v. Mathews, 145 Fed. 157, one claiming title by adverse possession not estopped by acceptance of deed from third person from denying title was in latter.

Syl. 8 (X, 672). Grantee estopped to deny grantor's title.

Approved in Townsend v. Kreigh, 133 Mich. 246, 94 N. W. 733, applying rule where grantee gave purchase money mortgage; Goodell v. Sanford, 31 Mont. 173, 77 Pac. 526, beneficiary vendees under trust who assented thereto, sold portions, and made partial payments and ratified transaction between purchaser and vendor until sued for price, are estopped to claim they received no title.

Syl. 10 (X, 672). Estoppel to deny grantor's title.

Approved in Oregon etc. R. R. Co. v. Quigley, 10 Idaho, 780, 80 Pac. 405, applying rule to grant of right of way over public lands; Coleman

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v. Coleman, 71 S. C. 520, 51 S. E. 251, where tenant in common conveyed fee to A and children, and A conveyed fee to B, who held exclusive possession for twenty years, deed from cotenants of A's grantor to B not presumed as against A's children after their majority.

109 U. S. 618-620, 27 L. 1053, SWEENEY v. UNITED STATES.

Syl. 1 (X, 672). Building contract—Certificate of officer—Payments.

Approved in Bush v. Jones, 144 Fed. 945, applying rule to contract providing for payments only on architect's certificate; Moore v. Cornwall, 144 Fed. 30, charter providing that captain to furnish charterer's certificate from charterer's marine surveyor that vessel is seaworthy, otherwise charter void, does not justify refusal of certificate without survey because of age of vessel; Guild v. Andrews, 137 Fed. 371, 70 C. C. A. 49, applying rule to contract for sewer making engineer arbiter of amount and character of work done, its conformity to contract and compensation to be paid; Lamson v. Marshall, 133 Mich. 266, 95 N. W. 83, difference of eight hundred yards between estimate of engineer and rock actually excavated is not evidence of bad faith; Livesley v. Johnston, 45 Or. 46, 106 Am. St. Rep. 647, 76 Pac. 949, 65 L. R. A. 783, upholding contract for sale of hops providing that if in judgment of buyer less quantity or in different condition than agreed on delivered, buyer may take same at difference in price between contract and value of hops delivered; Plumbing Co. v. Carr, 54 W. Va. 276, 46 S. E. 460, applying rule to contract for plumbing providing for payment when work completed to satisfaction of owner or architect.

Distinguished in Merchants' Nat. Bank v. East Grand Forks, 94 Minn. 252, 102 N. W. 705, upholding curative act requiring city to pay for work done under city contract providing for payments on estimate of engineer.

109 U. S. 633-640, 27 L. 1058, ESTEY v. BURDETT.

(X, 674.) Miscellaneous. Cited in Ex parte National Enameling etc. Co., 201 U. S. 160, 50 L. 708, 26 Sup. Ct. 404, decree in infringement suit against single defendant dismissing bill as to claims held invalid is not final appealable decree.

109 U. S. 654-659, 27 L. 1068, WYMAN v. HALSTEAD.

Syl. 1 (X, 676). Venue—Debts due decedent.

Approved in Cunnius v. Reading School Dist., 198 U. S. 467, 49 L. 1129, 25 Sup. Ct. 721, upholding power of state to confer jurisdiction to administer estates of absentees; Bates Machine Co. v. Norton Iron Works, 113 Ky. 379, 68 S. W. 425, where debtor is resident of state, fact that money about to be collected by creditor and removed from state is sufficient ground for attachment; Kidd v. New Hampshire Traction Co., 72 N. H. 285, 56 Atl. 469, 66 L. R. A. 574, right of foreign corporation to action against resident corporation is property within jurisdiction of local courts.

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109 U. S. 665-668, 27 L. 1065, BENDEY v. TOWNSEND.

Syl. 1 (X, 678). Indorsement of note before delivery.

Approved in Camp v. First National Bank of Ocala, 44 Fla. 503, 103 Am. St. Rep. 173, 33 So. 242, following rule.

109 U. S. 672-702, 27 L. 1070, POTOMAC STEAMBOAT CO. v. UPPER POTOMAC S. CO.

Syl. 2 (X, 680). Contracts—Evidence of preliminary negotiations.

Approved in Knitting Mills v. United States Fidelity etc. Co., 137 N. C. 570, 50 S. E. 306, 70 L. R. A. 167, legal effect of terms of bond cannot be modified by extrinsic evidence of preliminary negotiations.

Syl. 4 (X, 680). Riparian owner's right of access.

Approved in United States v. Roth, 2 Alaska, 263, holding possession of homesteader coextensive with boundaries of land, and extends over shore lands of navigable waters abutting thereon; Crawford Co. v. Hathaway, 67 Neb. 336, 108 Am. St. Rep. 655, 93 N. W. 784, determining riparian rights under irrigation laws; Newport News etc. Dry Dock Co. v. Jones, 105 Va. 510, 54 S. E. 316, arguendo.

(X, 680.) Miscellaneous. Cited in South Bound R. R. v. Burton, 67 S. C. 520, 46 S. E. 341, under act of 1876, under which city of Columbia founded, abutting owner entitled to damages where council authorized operation of railroad in street.

109 U. S. 702-725, 27 L. 1081, CHICAGO ETC. R. R. v. UNION ROLLING MILL CO.

Syl. 1 (X, 681). Dismissal of bill carries cross-bill.

Approved in Badger etc. Mill Co. v. Stockton Gold etc. Co., 139 Fed. 840, dismissal of bill to quiet title to mining claim does not carry with it cross-bill seeking to have title quieted in defendant and which alleges facts not in original bill; Gilmore v. Bort, 134 Fed. 662, in suit to cancel indemnity bond, one of defendants, by filing cross-bill alleging validity of bond and seeking relief against codefendant on own bond, does not have right to object to original bill; Georgia Pine etc. Co. v. Bilfinger, 129 Fed. 132, complainant in infringement suit in which preliminary injunction issued cannot dismiss without prejudice after proofs taken showing no infringement.

Syl. 2 (X, 681). Complainant's right to dismiss bill.

Approved in Gilmore v. Bort, 134 Fed. 660, in suit to cancel bond given by complainants to indemnify defendants for loss of money of one of them deposited by other in certain bank, latter filing cross-bill alleging validity of bond and also seeking relief against codefendant on own bond, cannot object to dismissal of original bill; Long v. Anderson, 48 Fla. 287, 37 So. 219, after answer to bill in equity, mere filing of praecipe for dismissal by plaintiff without order of court thereon is not dismissal of bill.

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109 U. S. 725-734, 27 L. 1089, HOWARD v. CARUSI.

Syl. 1 (X, 683). Devise with limitation over—Power of sale.

Approved in Russell v. Jones, 135 Fed. 941, 68 C. C. A. 487, holding evidence insufficient to show verbal contract by legatee to make certain testamentary disposition of property; Gannon v. Albright, 183 Mo. 252, 105 Am. St. Rep. 471, 67 L. R. A. 97, 81 S. W. 1164, where will gave land to testator's sons, their heirs and assigns forever, and if either should die without issue property to go to testator's heirs, sons took fee; Bodmann German etc. Widows' Home v. Lippardt, 70 Ohio St. 288, 290, 294, 71 N. E. 774, 775, will giving wife all estate with power to sell and after her death all remaining to be distributed in certain way, gives widow power to convey fee. See 106 Am. St. Rep. 508, note.

CX UNITED STATES.

110 U. S. 7-15, 28 L. 49, MARTIN v. WEBB.

Syl. 2 (X, 686). Implied authority of bank cashier.

Approved in Blanc v. Germania Nat. Bank, 114 La. 742, 38 So. 538, corporation is estopped from denying liability on note executed by secretary in due course of business, although charter requires president and secretary to execute notes, where secretary's acts have been recognized; Smith v. Bank of New England, 72 N. H. 9, 54 Atl. 387, directors of corporation are estopped from denying authority of president to execute contract when with knowledge they did not disaffirm it; Louchheim v. Somerset B. & L. Assn., 211 Pa. 503, 60 Atl. 1055, secretary of building association who collected dues from members for years when by-laws authorized a committee to do so is deemed to have power to do so, and payments to him were payments to the association; Louchheim v. Somerset B. & L. Assn., 211 Pa. 506, 60 Atl. 1056, after permitting secretary to collect money due building association for twenty years it cannot set up want of authority in the by-laws; Coolidge v. Schering, 32 Wash. 564, 73 Pac. 685, where secretary and treasurer of company who had charge of its affairs wrongfully sold certain land to innocent purchaser, corporation was estopped from denying authority of officers when corporation did not take any steps for two years after notice.

Syl. 3 (X, 687). Knowledge of bank directors.

Approved in Rankin v. Cooper, 149 Fed. 1013, directors of bank are liable for loss sustained by reason of excessive loans by president where they had no knowledge of the fact and took no steps to reduce the loans; Clement v. Young-McShea etc. Co., 69 N. J. Eq. 352, 60 Atl. 421, determining ratification of lease to corporation where made by party who was practically owner of corporation; Orme v. Baker, 74 Ohio St. 353, 78 N. E. 444, where board of directors gives entire charge of

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its affairs to cashier, it is liable to depositor who deposits money day before its insolvency, which resulted from fraud of its cashier.

110 U. S. 15-26, 28 L. 52, HOLLAND v. CHALLEN.

Syl. 1 (X, 688). Bill of peace.

Approved in Mathews S. Co. v. Mathews, 148 Fed. 493, Rev. Laws Mass., c. 159, sec. 3, cl. 7, relating to suits by creditors, to reach property of debtor, does not apply to federal court.

Syl. 2 (X, 688). Ejectment—Equitable relief.

Approved in Greenfield v. United States etc. Co., 133 Fed. 786, 787, where plaintiff is owner in possession of real property, and there is outstanding adverse claim, he is entitled to maintain suit to quiet title without first establishing his title by action at law.

Syl. 3 (X, 688). Bill quia timet.

Approved in United States Min. Co. v. Lawson, 134 Fed. 772, 67 C. C. A. 587, owner of mining claim in possession of its surface claiming title to entire claim may maintain quiet title action, although bill shows defendant has done underground work and removed ore.

Syl. 4 (X, 688). State relief in federal courts.

Approved in Devine v. Los Angeles, 202 U. S. 333, 50 L. 1053, 26 Sup. Ct. 652, in order to give federal court jurisdiction, it is not sufficient that bill to quiet title shows that defendant's adverse title was based on erroneous construction of treaty of Guadalupe Hidalgo; United States Min. Co. v. Lawson, 134 Fed. 771, 67 C. C. A. 587, federal court may enforce remedy given by Rev. St. Utah, 1898, §§ 2915, 3511, relating to actions to quiet title; Smith Oyster Co. v. Darbee etc. Land Co., 149 Fed. 559, under Civ. Code, Cal., § 738, action to quiet title may be maintained against adverse claims without plaintiff first establishing his right by action at law; Willitt v. Baker, 133 Fed. 943, where state statute authorizes suit to quiet title regardless of possession, federal court has jurisdiction, in which suit to support adverse claim to mining grounds may be maintained.

Syl. 5 (X, 690). Quieting title in equity.

Approved in Douglas Jockey Club v. Granger, 146 Fed. 419, suit to enjoin officers of a state from exercising powers conferred by state statute on ground that they are violating property rights of complainant under constitution is within jurisdiction of federal court without regard to citizenship; Ames etc. Co. v. Big Indian etc. Co., 146 Fed. 173, 175, rights arising under Civ. Code, Mont., § 1891, relating to water rights, may be enforced in federal court where there is diversity of citizenship; New York etc. Co. v. City of New York, 145 Fed. 662, federal court will give effect to statute of New York giving tenant under lease for more than ten years right to maintain action to remove cloud upon his title; Shewalter v. Lexington, 143 Fed. 166, suit contesting validity of tax bill for street improvements does not involve title to real estate within meaning of constitution for purpose of giving supreme court of

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state jurisdiction over controversies affecting titles to real estate; Illinois Life Ins. Co. v. Newman, 141 Fed. 453, federal court of equity is without power to enjoin collection of tax levied under state authority on ground of its illegality; Courtney v. Pradt, 135 Fed. 821, in the absence of statute authorizing suit, against foreign executor, he cannot be sued in state other than where appointed; Dawson v. Orange, 78 Conn. 100, 61 Atl. 102, Pub. Acts 1893, p. 237, c. 66 (Gen. St. 1902, § 4053), permitting jury in suits to determine adverse claims to realty, is valid.

Syl. 6 (X, 692). Quieting title by one out of possession.

Approved in First Baptist Church v. Harper, 191 Mass. 209, 77 N. E. 780, bill to remove cloud from land cannot be maintained unless actual possession and legal title are in plaintiff.

110 U. S. 27-42, 28 L. 56, CEDAR RAPIDS ETC. R. R. v. HERRING.

Syl. 3 (X, 693). Railroad aid grants.

Approved in Humbird v. Avery, 195 U. S. 508, 49 L. 299, 25 Sup. Ct. 123, court will not determine in advance of action of Land Department respective rights of grantees from Northern Pacific Railway Company of land claimed to be within indemnity limits of grant of July 2, 1864 (13 Stat. at L. 365, c. 217).

Syl. 4 (X, 693). Selection of railroad grants.

Approved in Sjoli v. Dreschel, 199 U. S. 566, 50 L. 312, note, 26 Sup. Ct. 254, Secretary of Interior has no authority to withdraw from sale settlement lands within indemnity limits not previously selected to supply deficiencies within place limits of company's road.

110 U. S. 42-46, 28 L. 64, TAYLOR v. BEMISS.

Syl. 2 (X, 694). Payment to guardian.

Approved in McCoy v. Lane, 66 Neb. 852, 92 N. W. 1012, guardian has authority to bind estate of ward by contract for services for preservation of estate.

Syl. 3 (X, 694). Contingent attorney's fees.

Approved in Nutt v. Knut, 200 U. S. 21, 50 L. 353, 26 Sup. Ct. 216, illegality, under U. S. Rev. St. § 3477, U. S. Comp. St. 1901, p. 2320, of clause in contract for prosecution of claim against United States does not invalidate that part of contract that provides for payment of services of sum equal to one-third of amount allowed.

Syl. 5 (X, 694). Excessive contingent fees.

Approved in Whinery v. Brown, 36 Ind. App. 282, 75 N. E. 607, contract by attorney to collect claim for damages for $10, if $50 was recovered, and if more, the fee should be in proportion, is valid; Bailey v. Garrison, 68 Neb. 782, 94 N. W. 991, guardian has authority to bind estate of his ward by reasonable contract for services to preserve the estate.

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110 U. S. 47-50, 28 L. 62, GILMER v. HIGLEY.

Syl. 1 (X, 695). Cross-examination.

Approved in Resurrection G. Min. Co. v. Fortune G. Min. Co., 129 Fed. 674, 64 C. C. A. 180, where witness for plaintiff has given part of conversation on direct examination, fact that entire conversation constitutes affirmative defense is no bar to disclosure on cross-examination.

Syl. 2 (X, 695). Harmless error disregarded.

Approved in Sprinkle v. United States, 150 Fed. 59, typewritten letter purporting to have been dictated by defendant and signed in his name by stencil is inadmissible against him; Armour & Co. v. Russell, 144 Fed. 616, master's duty to servant regarding appliances is to exercise ordinary care to provide servant with reasonably safe place and appliances; National Biscuit Co. v. Nolan, 138 Fed. 9, 70 C. C. A. 436, error to permit plaintiff to testify that she depended on herself for support; Union Pac. R. Co. v. Field, 137 Fed. 18, 69 C. C. A. 536, unsworn statement of irrelevant facts by counsel in his statement to jury is fatal; Resurrection G. Min. Co. v. Fortune G. Min. Co., 129 Fed. 677, 64 C. C. A. 180, parol evidence is incompetent to substitute in a conveyance a call for another monument in place of call for original monument.

110 U. S. 51, 52, 28 L. 67, UNITED STATES v. CAREY.

Syl. 1 (X, 695). Exceptions, when taken.

Approved in Montana Min. Co. v. St. Louis etc. Co., 147 Fed. 908, under rule 58, circuit court, district of Montana, exceptions taken in chambers to instructions was sufficient; dissenting opinion in Owens v. United States, 130 Fed. 286, 64 C. C. A. 525, majority holding after statement by court to counsel that there was no practice as to when exceptions to instructions in criminal case should be taken, exceptions taken day after jury retired were properly taken; Annans v. Sewell, 47 Or. 373, 84 Pac. 395, under B. & C. Comp., § 169, Oregon, relating to exceptions, an exception taken after trial is too late.

110 U. S. 52, 53, 28 L. 67, JENNESS v. CITIZENS' NAT. BANK OF ROME.

Syl. 1 (X, 696). Jurisdictional amount on appeal.

Approved in Fredonia Gas Co. v. Bailey, 72 Kan. 406, 83 Pac. 982, in action for $1,349 where defendant admits $1,000 is due and verdict is for $1,094.60, amount in controversy is but $94.60, and supreme court has no jurisdiction.

110 U. S. 59-61, 28 L. 70, HOLLAND v. CHAMBERS.

Syl. 1 (X, 697). Practice on removal.

Approved in O'Conor v. Texas, 202 U. S. 507, 50 L. 1126, 26 Sup Ct. 726, alien nonresident can no longer claim privilege under U. S. Stat. 1901, p. 520, subsec. 1, removing to federal circuit court an action commenced against him in state court.

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110 U. S. 76-80, 28 L. 65, SCHREIBER v. SHARPLESS.

Syl. 1 (X, 698). Infringing copyright—Death of defendant.

Approved in Walker v. Globe etc. Co., 140 Fed. 308, Rev. St., § 4965, is penal statute; Overland Cotton Mill Co. v. People, 32 Colo. 265, 105 Am. St. Rep. 74, 75 Pac. 925, judgment of conviction under Mills' Ann. St., § 413, for employing child under fourteen, abates on death of defendant.

Syl. 2 (X, 699). Survival of actions.

Approved in Walker v. Globe etc. Co., 140 Fed. 309, rights of authors of charts, etc., under U. S. Comp. St. 1901, p. 3406, are not taken away by U. S. Comp. St. 1901, pp. 3414, 3416.

110 U. S. 81-97, 28 L. 76, CLAFLIN v. COMMONWEALTH INS. CO.

Syl. 3 (X, 700). Presumption from fraud.

Approved in Fidelity etc. Co. v. Bank of Timmonsville, 139 Fed. 103, under fidelity bond providing that any willful misstatement of a fact by employer will render bond void, mere belief that it was immaterial whether question was answered truthfully or not did not make answer immaterial.

Syl. 4 (X, 700). False statements by insured as to loss.

Approved in Hall v. Western Underwriters' Assn., 106 Mo. App. 478, 81 S. W. 227, under policy providing any false swearing shall avoid policy, false statement by insured that his loss was largely in excess of what he knew it to be he could not recover at all; Meyer v. Home Ins. Co., 127 Wis. 301, 106 N. W. 1089, under terms of fire policy willful false swearing avoided the policy.

110 U. S. 97-107, 28 L. 83, HILTON v. MERRITT.

Syl. 4 (X, 701). Recovery of duties.

Approved in Light v. Canadian County Bank, 2 Okl. 550, 37 Pac. 1077, in proceedings under St. Okl., c. 66, art. 9 (Arrest and Bail), judgment debtor is not entitled to jury trial upon motion to discharge order of arrest.

110 U. S. 108-119, 28 L. 86, KELLOGG BRIDGE CO. v. HAMILTON.

Syl. 2 (X, 702). Sales—Caveat emptor.

Approved in Kell v. Trenchard, 142 Fed. 21, in purchase of standing lumber where inspection was rendered unavailing by fraud of seller, caveat emptor does not apply.

Syl. 3 (X, 702). Warranty of sale of personalty.

Approved in dissenting opinion in Davis etc. Co. v. Mallory, 137 Fed. 341, 69 L. R. A. 973, 69 C. C. A. 662, majority holding there is no implied warranty that article will be fit for certain purpose under

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contract to manufacture certain article. See 102 Am. St. Rep. 618, note.

Syl. 4 (X, 702). Warranty of manufacturer.

Approved in Davis etc. Co. v. Mallory, 137 Fed. 334, 69 L. R. A. 973, 69 C. C. A. 662, under written contract to sell certain drill there was no implied warranty that drill would do the work as well as a diamond drill; Bunch v. Weil, 72 Ark. 347, 80 S. W. 583, 65 L. R. A. 80, applying rule when retailer bought flour and it turned out inferior; Nixa Canning Co. v. Lehmann etc. Co., 70 Kan. 666, 79 Pac. 142, 70 L. R. A. 653, one who puts up apples in cans impliedly warrants that they are free from latent defects; George v. Shreveport etc. Co., 114 La. 505, 38 So. 434, manufacturer who sells his product is properly held presumptively to knowledge of qualities of thing he sells; Rollins Engine Co. v. Forge Co., 73 N. H. 99, 59 Atl. 386, manufacturer of piston rod for an engine is liable for ordinary care in selecting material but not for defects in steel if not discoverable by such care. See 102 Am. St. Rep. 616, note.

Distinguished in Davis etc. Co. v. Mallory, 137 Fed. 336, 69 L. R. A. 973, 69 C. C. A. 662, implied warranty that article will be fit for particular purpose will be inferred from contract to furnish it for that specific purpose.

Syl. 5 (X, 703). Liability of original contractor.

Approved in The Nimrod, 141 Fed. 216, acceptance of boiler for tug does not exclude implied warranty of fitness with respect to defects discoverable only by use.

110 U. S. 119-130, 28 L. 90, ALLEN v. WITHROW.

Syl. 2 (X, 703). Filling in blanks in deed.

Approved in Carr v. McColgan, 100 Md. 477, 60 Atl. 608, mortgagor who accepts benefits of loan is estopped from excepting to sale on ground that blanks in the mortgage were filled in after execution by scrivener under parol authority.

110 U. S. 151-156, 28 L. 101, HART v. SANSOM.

Syl. 3 (X, 705). Equity jurisdiction in personam.

Disapproved in York Co. Sav. Bank v. Abbot, 131 Fed. 984, suit by lessee against nonresident lessor to enforce rights under lease may have to enforce lien on real property and with jurisdiction of circuit court under U. S. Comp. St. 1901, p. 513.

Syl. 4 (X, 707). Judgment on constructive service.

Approved in Cella Com. Co. v. Bohlinger, 147 Fed. 422, Act Ark. Feb. 26, 1901, Kirby's Dig., § 835, authorizing personal judgment against foreign corporation after service on auditor, is unconstitutional; Metropolitan Rubber Co. v. Place, 147 Fed. 95, decree in suit for dissolution of corporation barring all claims which were not presented does not conclude nonresident of state unless he was personally served or ap-

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peared; Kerns v. McAulay, 8 Idaho, 565, 69 Pac. 540, where summons was published against nonresident, judgment was only valid as to property attached; Silver Camp Mining Co. v. Dickert, 31 Mont. 497, 78 Pac. 970, under Mont. Code Civ. Proc., § 638, service of summons by publication on nonresident will not sustain judgment in personam; Hill v. Henry, 66 N. J. Eq. 155, 57 Atl. 556, § 10 of N. J. Chancery Act (Revision 1902; P. L., p. 514), providing for publication against heirs, does not apply to suit to determine adverse claims to realty.

110 U. S. 174-177, 28 L. 109, REDFIELD v. YSTALYFERA IRON CO.

Syl. 2 (X, 709). Interest after judgment.

Approved in Herold v. Shanley, 146 Fed. 24, where internal revenue tax on legacies was illegally exacted, interest was properly allowed in suit to recover tax; The Eliza Lines, 132 Fed. 244, 65 C. C. A. 538, interest on adjustment of conflicting claims in admiralty is in discretion of court.

110 U. S. 178-183, 28 L. 111, QUEBEC BANK v. HELLMAN.

Syl. 1 (X, 710). Deposit of promissory note.

Approved in American Fine Art Co. v. Simon, 140 Fed. 537, under agreement that defendant should sign certain designs so that plaintiff might procure copyright and that such signing should not be an order for work, the signing did not constitute order for work done under a former contract.

110 U. S. 183-191, 23 L. 113, WHITE v. CROW.

Syl. 1 (X, 710). Setting aside fraudulent judgment.

Approved in Keith v. Alger, 85 S. W. 78, 114 Tenn. 28, where estate had received benefit of sale of land by vendee, it could not maintain action to set aside decree against the estate.

Syl. 3 (X, 711). Judgment on unauthorized appearance.

Approved in Bell v. Thompson, 147 Cal. 694, 82 Pac. 329, complaint for relief against judgment fraudulently procured which does not state facts showing defense on the merits is insufficient; Rice v. Bolton, 126 Iowa, 658, 100 N. W. 635, premature appointment of guardian ad litem of minor on petition for sale of land of intestate could not be collaterally attacked.

110 U. S. 192-200, 28 L. 116, JONESBORO CITY v. CAIRO ETC. R. R. CO.

Syl. 2 (X, 711). Legalizing unauthorized municipal acts.

Approved in Blair v. Chicago, 201 U. S. 452, 50 L. 823, 26 Sup. Ct. 427, authority of Chicago under Ill. Acts Feb. 14, 1859, and Feb. 21, 1861, to fix terms under which street railway companies should occupy streets, includes power to fix term of such occupation.

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110 U. S. 209-211, 28 L. 121, DIMPFELL v. OHIO ETC. RY.

Syl. 1 (X, 713). Laches of stockholder.

Approved in McCampbell v. Fountain Head R. R. Co., 111 Tenn. 73, 102 Am. St. Rep. 731, 77 S. W. 1074, stockholders to ultra vires subscription for stock cannot avoid same in equity.

Syl. 2 (X, 713). Rights of minority stockholders.

Approved in Von Arnim v. American Tube Works, 118 Mass. 518, 74 N. E. 681, minority stockholder in action against officers of corporation for misappropriation must allege corporation refused to act or that application would be useless. See 97 Am. St. Rep. 32, note.

Syl. 3 (X, 713). Stockholders' suit against corporation.

Approved in Bowling Green Tr. Co. v. Virginia etc. R. Co., 132 Fed. 923, where fitness of trustee in railroad mortgage is not questioned, individual bondholders are not necessary parties to suit to foreclose; Home Fire Ins. Co. v. Barber, 67 Neb. 658, 108 Am. St. Rep. 726, 727, 93 N. W. 1029, purchaser of stock cannot attack corporation for prior mismanagement unless the effects are injurious to him; Rankin v. Southwestern Brewery & Ice Co., 12 N. M. 59, 73 Pac. 614, stockholder acquiring stock by purchase cannot complain of illegal salaries paid directors prior to buying stock. See 97 Am. St. Rep. 40, note.

110 U. S. 219-221, 28 L. 126, UNITED STATES v. GRAHAM.

Syl. 2 (X, 715). Construction of statutes.

Approved in Houghton v. Payne, 194 U. S. 100-99, 48 L. 891, 892, 24 Sup. Ct. 590, in construing 20 Stat. at L. 355, 358, c. 180 (Stat. 1901, p. 2646), § 10, relating to postage rates, custom of department must yield to positive language of statute; Knight v. Shelton, 134 Fed. 434, under Const. Ark. 1874, art. 19, § 22, providing for submitting proposed amendments thereto to the electors of the state, approved by majority of electors voting on proposition is not sufficient unless also majority of electors voting at the election.

Distinguished in dissenting opinion in Bates etc. Co. v. Payne, 194 U. S. 111, 48 L. 896, 24 Sup. Ct. 595, majority holding refusal of postmaster general to admit to the mails as second-class matter monthly musical publication complete in itself, is not so clearly erroneous as to call for interference by courts.

110 U. S. 223, 28 L. 128, DOWS v. JOHNSON.

Syl. 1 (X, 716). Jurisdiction of supreme court.

Approved in Gray v. Grand Forks Merc. Co., 138 Fed. 347, under Bankr. Act July 1, 1898, c. 541, par. 25a, 30 Stat. 553, relating to appeals in bankruptcy proceedings, amount of allowance or rejection determines amount in controversy.

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110 U. S. 227-229, 28 L. 127, PUGH v. DAVIS.

Syl. 1 (X, 717). Granting supersedeas.

Approved in In re T. E. Hill Co., 148 Fed. 833, 834, neither citation nor bond are jurisdictional requisites to appear in bankruptcy, and defects may be cured after time for appeal.

110 U. S. 229-238, 28 L. 129, LAKE SHORE ETC. RY. v. CARBRAKE ETC. CO.

Syl. 3 (X, 717). Infringement of patents.

Approved in American Can Co. v. Hickmott etc. Co., 142 Fed. 146, Holden and Brown patent No. 598,567 for can-body machine, not infringed by Eldridge patent No. 712,998; O. H. Jewell Filter Co. v. Jackson, 140 Fed. 344, carrying arm of sixth claim of letters patent No. 509,126 for improvements in filters, not infringed by combination of straight arm with other elements of patented combination; Kip Armstrong Co. v. King Philip Mills, 130 Fed. 30, Baker patent No. 595,688, for warp stop-motion for looms, claim 5, is valid.

110 U. S. 264-272, 28 L. 141, FREEMAN v. DAWSON.

Syl. 1 (X, 718). Jurisdiction of supreme court.

Distinguished in Feely v. Bryan, 55 W. Va. 595, 47 S. E. 312, where several creditors with separate demands attack a mortgage as a preference, and a decree adjudging property for benefit of all creditors is made, these sums cannot be added to give supreme court jurisdiction for an appeal by preferred creditor.

Syl. 2 (X, 718). Application to set aside judgment.

Approved in King v. Davis, 137 Fed. 233, federal court has no power to vacate judgment of former term founded on false return of process; Thalheim v. Camp Phosphate Co., 48 Fla. 195, 37 So. 525, under § 1272, Rev. St. 1892, filing of supersedeas does not have effect of restoring to defendant personal property previously levied on.

110 U. S. 276-287, 28 L. 145, KRIPPENDORF v. HYDE.

Syl. 1 (X, 719). Possession by marshal.

Approved in Hockaday v. Drye, 7 Okl. 204, 54 Pac. 477, 478, where insolvent debtor has made assignment, and before filing inventory property is attached and sold, general creditors may interplead in attachment action.

Syl. 2 (X, 770). Ancillary proceeding in federal court.

Approved in In re McMahon, 147 Fed. 685, court of bankruptcy may determine suit by trustee against mortgagee of property to set aside mortgage given within four months prior to the bankruptcy; O'Connor v. O'Connor, 146 Fed. 997, suit to set aside judgment of dismissal entered by same court where judgment was obtained is ancillary to such action; King v. Davis, 137 Fed. 236, where at time husband was sued in ejectment he was in possession by sufferance of wife, who held title

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but was not sued and husband acquired life interest on death of wife after judgment, he is entitled to have judgment against him by default set aside; Security T. Co. v. Union T. Co., 134 Fed. 302, where state court has assumed jurisdiction of suit to foreclose railroad mortgage and appointed a receiver, federal will not assume jurisdiction; Hatcher v. Hendrie etc. Co., 133 Fed. 270, 68 C. C. A. 19, attachment lien obtained in state court remains in force upon removal of case to federal court; Hampton Roads etc. Co. v. Newport News etc. Co., 131 Fed. 536, where federal court has jurisdiction of assets of railroad company operating through receiver, it has jurisdiction of petition by receiver to restrain competing company from maintaining gates across a street, without regard to question of citizenship.

Syl. 3 (X, 720). Interest of party in litgation.

Approved in Miller & Lux v. Rickey, 146 Fed. 584, cross-bills between defendants in federal court to determine appropriators' rights in stream may be filed where court has jurisdiction of suit by reason of diversity of citizenship; Ames etc. Co. v. Big Indian etc. Co., 146 Fed. 180, in suit in federal court to establish rights to water of stream against several appropriators, all of whom are citizens against different states, cross-bills may be filed between defendants; In re Moody, 131 Fed. 529, bankruptcy court has jurisdiction to take possession by marshal or receiver of property in possession of claimant, where it has been fraudulently transferred by bankrupt, and said court has power to determine right of ownership; Louisville Trust Co. v. Knott, 130 Fed. 826, 65 C. C. A. 158, state court has jurisdiction over action by minority stockholders for inspection of books of liquidating corporation, where creditor of corporation collusively obtained a judgment and secured appointment of receiver.

Syl. 4 (X, 722). Court's power over process.

Approved in Nelson v. Meehan, 2 Alaska, 495, where plaintiff recovered judgment for specific performance of contract, it would be set aside in same court upon showing of fraud and perjury.

110 U. S. 288-295, 28 L. 149, AMERICAN FILE CO. v. GARRETT.

Syl. 2 (X, 723). Pledgee without notice.

Approved in Tollman v. Quincy, 129 Fed. 975, where defendant's note was transferred to plaintiff before maturity in settlement of pending suit, plaintiff was bona fide holder; Birket v. Elward, 68 Kan. 300, 74 Pac. 1101, 64 L. R. A. 568, indorsee of negotiable note taken as security for prior debt, there being no new consideration, is holder for value.

Syl. 3 (X, 723). Duty of assignee in bankruptcy.

Approved in First Nat. Bank v. Lasater, 196 U. S. 119, 49 L. 409, 25 Sup. Ct. 206, payment under § 5198, Rev. St., by giving renewal note, will not uphold recovery against bank on account of usury in first note.

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110 U. S. 296-301, 28 L. 152, WHITESIDE v. HASELTON.

Syl. 2 (X, 724). Conclusiveness of decree.

Distinguished in Mankato v. Barber A. P. Co., 142 Fed. 341, where contractor in the city was not party to suit to have contract adjudged void, it is not bound by judgment because it had knowledge thereof.

Syl. 3 (X, 724). Purchaser pendente lite.

Approved in Hargrove v. Cherokee Nation, 129 Fed. 190, 63 C. C. A. 276, general rule that stranger cannot by purchase from defendant pendente lite acquire any right not subject to judgment, applies to suit by Indian tribe to recover lands held by those claiming membership in the tribe.

Distinguished in King v. Davis, 137 Fed. 240, Va. Code 1887, § 3566, relating to filing lis pendens, has no application to federal courts sitting in Virginia.

110 U. S. 301-304, 28 L. 154, ILLINOIS ETC. R. R. v. TURRILL.

Syl. 1 (X, 725). Interest on infringer's profits.

Approved in Doten v. City of Boston, 138 Fed. 408, owner of patent may recover from user infringing device amount saved by substitution of such device for one previously used.

110 U. S. 305-310, 28 L. 156, JEFFRIES v. MUTUAL LIFE INS. CO.

Syl. 2 (X, 725). Champertous contract.

Approved in Silverman v. Pennsylvania R. Co., 141 Fed. 382, contract with attorney by which he agrees to conduct suit on contingent fee and advance disbursements is void; Duck v. Antle, 5 Okl. 156, 47 Pac. 1057, error to sustain demurrer to answer on promissory note where it was alleged that note was given as consideration to dismiss contest against homestead entry of defendant, which suit plaintiff knew he had no right to maintain.

110 U. S. 311-317, 28 L. 158, VOGEL v. GRUAZ.

Syl. 1 (X, 726). Privileged communications—Action for libel.

Approved in Gabriel v. McMullin, 127 Iowa, 429, 103 N. W. 356, under Code, § 4608, prohibiting disclosure of confidential communications by client to attorney, communication made by prosecutor to county attorney requesting arrest of accused is confidential; Bee Publishing Co. v. Shields, 68 Neb. 753, 94 N. W. 1030, occasion of privilege will not justify false and groundless imputations of wicked motives against public officials; Schultz v. Strauss, 127 Wis. 331, 106 N. W. 1068, statements by defendant as witness before grand jury and to district attorney during investigation of an offense were privileged. See 104 Am. St. Rep. 116-126, note.

Distinguished in Miller v. Nuckolls, 77 Ark. 72, 4 L. R. A. (N. S.) 149, 91 S. W. 762, statement that a single woman had given birth to a child amounted to charge of fornication and was libelous per se.

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110 U. S. 317-321, 28 L. 161, CORKER v. JONES.

Syl. 3 (X, 726). Suit by ward against guardian.

See 112 Am. St. Rep. 199, note.

110 U. S. 321-325, 28 L. 162, EAST ST. LOUIS v. ZERBY.

Syl. 3 (X, 727). Discretion of municipal authorities.

Approved in State ex rel. Benedict v. New Orleans, 111 La. 376, 35 So. 606, determination of what are necessary and usual charges against city is in discretion of city authorities; Helena W. W. Co. v. City of Helena, 31 Mont. 247, 78 Pac. 222, expenditure to install water system is not current expense within Sess. Laws 1903, p. 42.

110 U. S. 330-338, 28 L. 163, TAYLOR v. DAVIS.

Syl. 1 (X, 727). Liability of trustee.

Approved in Carpenter v. Lindauer, 12 N. M. 396, 78 Pac. 58, administratrix of estate of deceased husband which is wholly community property is liable to extent of such estate to creditors of community; Le Roy v. Jacobsky, 136 N. C. 451, 48 S. E. 798, 67 L. R. A. 977, guardian, a tenant in common with his wards, is not personally bound where he signed his own name and also as guardian to contract to convey the property where purchaser knew for whom he was acting.

110 U. S. 338-347, 28 L. 168, UNITED STATES v. BEHAN.

Syl. 2 (X, 729). Wrongful breach of contract—Damages.

Approved in Michigan Yacht etc. Co. v. Busch, 143 Fed. 934, measure of damages for failure to build boat, where payments have been made, is excess of payments made over damages sustained by breach; Jenson v. Lee, 67 Kan. 542, 73 Pac. 73, one prevented from performing contract to work on ranch for share of profits may abandon contract and sue on quantum meruit for value of services rendered; Chrisholm etc. Mfg. Co. v. U. S. Canopy Co., 111 Tenn. 211, 77 S. W. 1064, in action for damages for price of certain patented brackets, counterclaim for failure to deliver in time was sustained as to amount of brackets sold to solvent customer and not delivered.

Syl. 3 (X, 729). Recovery of anticipated profits.

Approved in Lillard v. Kentucky Dist. etc. Co., 134 Fed. 178, 67 C. C. A. 74, under agreement to deliver distillery slop to fatten cattle at time and manner agreed, failure to deliver entitles buyer to damages for additional outlay for food and loss of anticipated profits from failure to make sales; Lazier Gas Engine Co. v. Du Bois, 130 Fed. 839, 65 C. C. A. 172, in action to recover damages for failure to manufacture machinery, where evidence showed profits during period contract was performed, verdict for profits for remaining months after breach was not objectionable; Spencer Medicine Co. v. Hall, 78 Ark. 343, 344, 93 S. W. 987, 988, determining right to recover future commissions by salesman for breach of contract; Choctaw etc. R. R. Co. v. Jacobs, 15 Okl. 500, 82 Pac. 504, loss of anticipated commissions from anticipated

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sales cannot be recovered in action against railroad company for delay in delivery of goods; Tootle v. Kent, 12 Okl. 692, 73 Pac. 315, in action by merchant for malicious acts of another, he may recover for depreciation of property and loss sustained from closing of his store; Barrett v. Raleigh C. & C. Co., 55 W. Va. 402. 47 S. E. 156, in action for failure to deliver bricks, plaintiff may prove loss if profits shown with reasonable certainty.

Syl. 4 (X, 730). Breach of contract—Anticipated profits.

Approved in In re Saxton Furnace Co., 142 Fed. 295, 296, where bankrupt has repudiated contract for purchase of machinery, seller was entitled to profits which he would have made by sale, if same can be shown with reasonable certainty.

Syl. 5 (X, 731). Breach of contract—Damages.

Approved in Richardson etc. Co. v. Swartzel, 70 Kan. 776, 79 Pac. 661, where contract between company and agent for sale of machinery is wrongfully terminated after partial performance, agent may sue for damages or upon quantum meruit for work performed; Vette v. Evans, 111 Mo. App. 596, 86 S. W. 506, where insurer transferred its assets to another company, a policy-holder may treat policy at an end and demand damages sustained; Griffith v. Blackwater B. & L. Co., 55 W. Va. 629, 48 S. E. 452, 69 L. R. A. 124, where money is expended in carrying out contract, upon dissolution thereof contractor is entitled to compensation for services and money expended to date of dissolution.

Syl. 6 (X, 731). Estoppel from denying damages.

Approved in Terrace Water Co. v. San Antonia etc. Co., 1 Cal. App. 514, 82 Pac. 564, where seller of electric power wrongfully puts an end to contract, he is estopped from denying buyer has been damaged to extent of actual loss and outlay; Griffith v. Blackwater B. & L. Co., 55 W. Va. 620, 48 S. E. 448, 69 L. R. A. 124, where contract has been entered into between contractor and director of corporation with approval of directors and stockholders, they are estopped from denying liability.

Syl. 7 (X, 731). Court of claims—Pleading.

Approved in District of Columbia v. Barnes, 197 U. S. 154, 49 L. 702, 25 Sup. Ct. 401, court of claims has power to reform written contract and award money relief to claimant on contract.

110 U. S. 347-384, 28 L. 173, SPRING VALLEY WATER WORKS v SCHATTLER.

Syl. 1 (X, 732). Repeal of method fixing water rates.

Approved in Tampa v. Tampa Water Wks. Co., 45 Fla. 623, 34 So. 638, provisions of c. 5070, p. 240, Acts 1901, are sufficient to authorize municipality to change water rates; Corporation Com. v. Railroad Co. (''Railroad Connection Case''), 137 N. C. 18, 49 S. E. 198, under Acts 1899, pp. 291, 340, c. 164, §§ 1, 21, corporation commission has power to compel railroad company to operate trains so that they will make connections with trains of other roads.

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Syl. 2 (X, 732). Charter subject to subsequent legislation.

Approved in Tampa Waterworks Co. v. Tampa, 199 U. S. 243, 50 L. 173, 26 Sup. Ct. 23, after letting contract with water company, municipality has power to alter the rates; Omaha Water Co. v. City of Omaha, 147 Fed. 6, legislature may empower city to suspend by contract for reasonable term of years its power to fix water rates; Ross v. Board of Supervisors, 128 Iowa, 440, 104 N. W. 511, where proceedings for construction of drainage ditch were commenced and statute under which work was done was held unconstitutional for failure to give notice to certain persons, subsequent enactment that applied to all proceedings was valid; Leavenworth v. Water Co., 69 Kan. 88, 76 Pac. 453, obligation to sell water plant at valuation to be fixed by three appraisers, one to be chosen by company, cannot be set aside by statute requiring sale after appraisement where company has no voice; Allen v. Ajax Min. Co., 30 Mont. 506, 77 Pac. 50, in suit by minority stockholders to restrain sale of corporate property, authority confused by Laws 1899, p. 113, did not impair obligation of contract; Rockingham etc. Co. v. Hobbs, 72 N. H. 538, 58 Atl. 49, 66 L. R. A. 581, legislature may at any time alter or amend charter of corporation engaged in manufacturing and selling electricity.

Syl. 4 (X, 733). Regulating water rates.

Approved in Chicago v. Cicero, 210 Ill. 299, 71 N. E. 360, Hurd's Rev. St. 1901, p. 347, § 26, in relation to duty of furnishing water by municipality owning waterworks, to municipality not owning waterworks, is constitutional.

Syl. 5 (X, 734). Judicial duties of municipalities.

Approved in Jones v. North Georgia Elec. Co., 125 Ga. 628, 54 S. E. 89, Acts 1897, p. 68, Van Epps' Code Supp., §§ 6454, 6456, in relation to right of eminent domain, is constitutional.

110 U. S. 389-398, 28 L. 186, CABLE v. ELLIS.

Syl. 3 (X, 735). Removal of cause.

Approved in Nash v. McNamara, 145 Fed. 543, parties brought into action in state court by cross-complaint who allege that they have succeeded to interests of plaintiff and allege substantially same cause of action against defendant as plaintiff had, must be considered as plaintiff's and cannot remove cause.

110 U. S. 398-400, 28 L. 189, TUPPER v. WISE.

Syl. 1 (X, 736). Jurisdiction—Amount in controversy—Separate demands.

Approved in Feely v. Bryan, 55 W. Va. 593, 47 S. E. 311, where creditors with separate demands have mortgage set aside as preference under § 2, c. 74, Code 1899, preferred creditor cannot add sums of all demands to give jurisdiction to supreme court on appeal.

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110 U. S. 401-403, 28 L. 190, BEAN v. PATTERSON.

Syl. 1 (X, 736). Printing transcript on appeal.

Approved in United States v. Mason, 129 Fed. 742, 64 C. C. A. 270, under Rev. St. U. S., § 833, printing and distributing bankruptcy forms by clerk district court were not properly chargeable as "necessary expenses."

110 U. S. 421-470, 28 L. 204, JUILLIARD v. GREENMAN (LEGAL TENDER CASE).

Syl. 1 (X, 737). Constitutional acts of Congress.

Approved in Ex parte Riggins, 134 Fed. 410, when negro citizen is assailed by white men with intent to prevent him from enjoying any right given by law to white men, he is deprived of freedom given him by thirteenth amendment.

110 U. S. 471-489, 28 L. 198, IOWA v. McFARLAND—ILLINOIS v. SAME.

Syl. 1 (X, 738). Sale defined.

Approved in Howell v. State, 124 Ga. 699, 52 S. E. 650, indictment for unlawful sale of intoxicating liquor contrary to local option law need not allege sale was for valuable consideration.

Syl. 4 (X, 739). Contemporaneous construction of statutes.

Approved in Pitts v. Logan County, 3 Okl. 740, 41 Pac. 591, clerks of district courts of territory are required by United States to account to Secretary of Treasury, for fees earned as such, and any act of legislature attempting to regulate them is void.

110 U. S. 490-498, 28 L. 222, PENNSYLVANIA R. R. v. LOCOMOTIVE TRUCK CO.

Syl. 1 (X, 739). Patents—Application of old process.

Approved in O'Rourke Eng. etc. Co. v. McMullen, 150 Fed. 349, 350, Moran patent No. 500,149, for air-lock for work carried on under great air pressure construed, and claim 2 not infringed, and claim 3 void for lack of invention; Thomas v. St. Louis etc. R. Co., 149 Fed. 755, Thomas patent No. 570,148, for lateral support for cars, is void for lack of patentable novelty; American etc. Co. v. Universal etc. Mfg. Co., 145 Fed. 643, Jones patent 688,739, for method of producing records for talking machines, is void for anticipation in prior art; Daylight etc. Mfg. Co. v. American Pris. L. Co., 142 Fed. 461, Cummings patent No. 695,282, for machine for making prismatic glass, is void for lack of patentable invention; Capewell v. Goldsmith, 138 Fed. 686, Capewell patent No. 636,972, for stick-pin retainer, is void for want of patentable invention; North Jersey St. Ry. Co. v. Brill, 134 Fed. 584, 67 C. C. A. 380, Brill patents Nos. 627,898 and 627,900, for car trucks, void for lack of invention in view of Thyng patent No. 4,276.

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Syl. 2 (X, 742). Scope of partnership.

Approved in Standard Wagon Co. v. Few & Co., 119 Ga. 296, 46 S. E. 110, one taking partnership note in payment of goods supplied to one partner takes with notice and cannot recover on note.

Syl. 3 (X, 742). Partnership business—Question for jury.

Approved in Cassidy & McFadden v. Saline Co. Bank, 14 Okl. 534, 78 Pac. 325, whether act of one partner in transferring certain moneys from partnership account to his personal account was within scope of partnership was question of fact.

Syl. 5 (X, 743). Valid sale—Future delivery.

Approved in Cleage v. Laidley, 149 Fed. 351, where speculator dealt in 14,000,000 bushels of grain, and less than two per cent was delivered, and made contracts for purchase of grain for future delivery through brokers, and became indebted to them for balances on account, contract was not void where he testified he did not intend to deliver or receive unless forced to do so; Pratt & Co. v. Ashmore, 224 Ill. 591, 79 N. E. 953, under Hurd's Rev. St. 1905, pp. 698, 699, c. 38, § 130, relating to options to buy or sell at future time, all contracts are void where parties understood that purchase or sale should be settled on differences; Beidler etc. Co. v. Coe Com. Co., 13 N. D. 646, 102 N. W. 882, contract for sale of grain to be delivered at future date is valid where parties intended that property is to be delivered by seller and paid for at contract price.

Syl. 6 (X, 743). Void sale—Future delivery.

Approved in Berry v. Chase, 146 Fed. 630, order to buy or sell stock on New York stock exchange when executed is valid contract unless both parties agree that there shall be no delivery, but merely payment of difference between market and contract price; Hocker v. Western Union Tel. Co., 45 Fla. 367, 34 So. 902, deposit of margin for protection of broker buying on stock exchange does not imply that contract is one where no goods are to be delivered, but difference in price is to be paid: Western Union Tel. Co. v. State, 165 Ind. 510, 76 N. E. 107, requirement of board of trade that every applicant for market quotations shall obligate himself not to use them for bucket-shop purposes is reasonable; State v. McGinnis, 138 N. C. 727, 51 S. E. 51, "dealing in futures" is gambling contract and punishable, and is within police power of state and not prohibited by fourteenth amendment; State v. Clayton, 138 N. C. 735, 50 S. E. 867, under Laws 1889, p. 233, c. 221, prohibiting all wagering contracts or betting on rise or fall in prices, dealer in wholesale merchandise who purchases pork on margin with no intention of actual delivery is indictable; Wheeler v. Metropolitan Stock Exch., 72 N. H. 318, 56 Atl. 756, where parties do not intend to make actual delivery under a contract, same is mere wager and therefore null and void; MacDonald v. Gessler, 208 Pa. St. 181, 57 Atl. 362, there is no gambling transaction, where broker shows that it was intention to pur-

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chase the stock and that he was ready and able to so deliver on demand, although purchaser did not intend to pay outright; Scales v. State, 46 Tex. Cr. 304, 108 Am. St. Rep. 1014, 81 S. W. 950, 66 L. R. A. 730, the burden is upon state to show that both parties engaged in wagering contract in order to convict under an indictment for selling fixtures.

Syl. 7 (X, 744). Brokers—Particeps criminis.

Approved in Stewart v. Wright, 147 Fed. 335, where plaintiff was induced to enter into scheme by which he was to wager certain money on a fraudulent footrace, which he knew to be fraudulent, for the purpose of getting money of others, he may recover what he thus had wagered; dissenting opinion in Stewart v. Wright, 147 Fed. 339, majority holding that where plaintiff was party to fraudulent footrace wager, where he thought he was defrauding others, but in fact was being defrauded, he was not in pari delicto with his supposed confederates.

Syl. 8 (X, 745). Gaming contracts—American rule.

Approved in dissenting opinion in Stewart v. Wright, 147 Fed. 340, 344, majority holding plaintiff, who was defrauded by fraudulent footrace while he believed he was defrauding others, may recover the money so lost by him.

Syl. 9 (X, 745). Evidence of custom.

Approved in Citizens' State Bank v. Chambers, 129 Iowa, 421, 105 N. W. 695, in suit to foreclose mortgage issued on an application "at five and one per cent per annum," evidence of custom in use of quoted words was inadmissible in absence of knowledge of defendant; Bixby v. Bruce, 69 Neb. 81, 95 N. W. 35, in action to recover for bricks furnished, custom among masons to charge for air spaces between walls was inadmissible where it was not shown that custom was general and notorious; Pennsylvania etc. R. R. Co. v. Naive, 112 Tenn. 257, 79 S. W. 128, 64 L. R. A. 443, it was error in action against carrier for damages for failure to delay in delivering dressed goods to exclude evidence of custom to suspend business on 4th of July.

(X, 741.) Miscellaneous. Cited in Chase v. Soule, 76 Vt. 357, 57 Atl. 755, agreement by one of two ex-owners of personalty to indemnify other against loss if he would refuse to offer to purchase is without consideration.

110 U. S. 516-558, 28 L. 232, HURTADO v. PEOPLE OF CALIFORNIA.

Syl. 1 (X, 746). Construction of constitution.

Approved in West v. Louisiana, 194 U. S. 264, 48 L. 970, 24 Sup. Ct. 650, question whether deposition in criminal action may be read is within province of state court, and no federal question is involved.

Syl. 2 (X, 746). Due process—Fifth amendment.

Approved in State v. Jack, 69 Kan. 393, 76 Pac. 913, 1 L. R. A. (N. S.) 167, proceeding before district court upon written application of county attorney under § 10, c. 265, p. 485, Laws 1897, to take testimony

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of witness in reference to violation of "anti-trust law," is due process of law; dissenting opinion in Dorr v. United States, 195 U. S. 157, 49 L. 136, 24 Sup. Ct. 808, majority holding under §§ 7, 8, of Libel Act of Philippine Commission, defendant is not entitled to jury trial.

Syl. 3 (X, 746). Due process—Fourteenth amendment.

Approved in Dorr v. United States, 195 U. S. 144, 49 L. 131, 24 Sup. Ct. 808, Congress has power to pass laws for the government of the Philippine Islands, which do not give the right to trial by jury; Ex parte Moebus, 137 Fed. 156, petition for writ of habeas corpus which shows that petitioner since his extradition from another state has been confined in a penitentiary for five years on only governor's warrant, states case for jurisdiction of federal court; Ex parte Riggins, 134 Fed. 418, citizen is deprived of due process of law when he is taken from custody of state authorities and murdered; Jamison v. Wimbish, 130 Fed. 358, person sentenced to punishment as that described in the opinion does not obtain "due process of law" within the meaning of the constitution; McKinster v. Sager, 163 Ind. 685, 106 Am. St. Rep. 268, 72 N. E. 856-859, 68 L. R. A. 273, Acts 1903, p. 276, c. 153, preferring classes of creditors, is void, being in violation of fourteenth amendment; State v. Miller, 71 N. J. L. 532, 60 Atl. 203, it was not erroneous to allow jail physician to testify to wounds on defendant's hands, although he had defendant removed to a private room and his clothes removed; State v. Stimpson, 78 Vt. 133, 62 Atl. 17, 1 L. R. A. (N. S.) 1153, V. S. 1867, as amended Acts 1898, p. 34, No. 46, and Acts 1904, No. 64, providing that state's attorney may prosecute by information certain crimes, is not unconstitutional.

Syl. 4 (X, 746). Due process—Prosecution by information.

Approved in Ex parte Moran, 144 Fed. 603, selection of grand jury in way not authorized by statute of territory and receipt of indictment from such grand jury do not entitle defendant to release on habeas corpus; State v. Rudolph, 187 Mo. 83, 85 S. W. 587, Const. U. S., Amend. 5, prohibiting prosecution for felony except on presentment or indictment, limits federal power, but does not prevent state from prosecuting for felony on information; State v. Niebekier, 184 Mo. 222, 83 S. W. 526, it is no ground for objection to conviction for murder that defendant was subject of Austria and was tried by information and not by indictment; State v. Guglielmo, 46 Or. 252, 262, 79 Pac. 578, 80 Pac. 103, conviction of murder charged by information under Laws 1899, p. 99, B. & C. Comp., §§ 1258-1264, was not in violation of fourteenth amendment; State v. Nichols, 27 R. I. 83, 60 Atl. 768, under Acts 1838, p. 981, c. 8, § 8, providing for punishment for crimes, offense punishable by imprisonment for one year is "infamous crime," and must be tried on indictment or information.

Syl. 5 (X, 749). Due process—Prosecution by information.

Cited in Beavers v. Henkel, 194 U. S. 84, 48 L. 886, 24 Sup. Ct. 605, defendant indicted for having received money for procuring contract

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with government, while one of its officers may be arrested in one district and delivered to another district for trial.

110 U. S. 558-567, 28 L. 249, WASHER v. BULLITT CO.

Syl. 1 (X, 749). Amended pleadings.

Approved in Johnson v. Thomas, 197 U. S. 619, 49 L. 909, 25 Sup. Ct. 797, following rule.

Syl. 2 (X, 749). Maintenance of bridge by county.

Approved in Dodge Co. v. Saunders Co., 70 Neb. 451, 100 N. W. 934, under § 87, c. 78, Comp. St. 1901, county may be compelled to contribute toward repair of bridge abutting in such county, although it is located mainly in another county.

110 U. S. 568-574, 28 L. 246, KILLIAN v. EBBINGHAUS.

Syl. 1 (X, 750). Bill of interpleader—Necessary allegations.

Approved in Stephenson v. Burdett, 56 W. Va. 114, 48 S. E. 848, where owners of adjoining tracts of land could not agree on boundary line, purchasers of timber on said land could not maintain suit in interpleader against land owners for purpose of adjudicating the dividing line.

Syl. 3 (X, 750). Equity—Adequacy of law remedy.

Approved in Southern Pac. R. R. Co. v. United States, 200 U. S. 349, 50 L. 510, 26 Sup. Ct. 296, equity suit may be maintained by government to recover from railroad company value of land erroneously patented and sold where objection that there is plain remedy at law is raised for first time on appeal; General Elec. Co. v. Westinghouse Elec. & Mfg. Co., 144 Fed. 466, where contract for manufacture of electric equipment provided that in case of violation the guilty party should pay certain damages, complainant was not entitled to injunction to restrain defendant's violation of contract; Southern Pac. R. Co. v. United States, 133 Fed. 655, 66 C. C. A. 581, court of equity has jurisdiction of suit by government against railroad company to determine what portion of land erroneously patented has been sold to bona fide purchasers and others; Glenn v. West, 103 Va. 524, 49 S. E. 672, holder of equitable title to land out of possession cannot maintain bill to quiet title against party in possession under tax title; dissenting opinion in Barnes v. Newton, 5 Okl. 458, 460, 49 Pac. 1080, 1081, majority holding one in whose favor judgment has been rendered before Land Department cannot maintain injunction to obtain possession of part of premises affected by decision, of which he has never been in possession.

110 U. S. 574-590, 28 L. 262, HOPT v. UTAH.

Syl. 2 (X, 752). Commencement of criminal trial.

Approved in Nichols v. Territory, 3 Okl. 625, 41 Pac. 109, defendants jointly indicted may have separate trials, but demand therefor must be made before impaneling begins; dissenting opinion in Kepner v. United States, 195 U. S. 135, 49 L. 126, 24 Sup. Ct. 797, majority holding under

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§ 5 of Act of July 1, 1902, establishing civil government in Philippine Islands, accused shall not be put twice in jeopardy for same offense; dissenting opinion in Schick v. United States, 195 U. S. 83, 84, 49 L. 108, 24 Sup. Ct. 826, majority holding written waiver by defendant in action by government to recover penalty under § 11, Act of 1886, as amended by Act of May 9, 1902, is not in conflict with constitution and laws of United States; dissenting opinion in Howard v. Commonwealth, 118 Ky. 17, 80 S. W. 216, majority holding not ground for reversal that during impaneling of jury in felony trial with defendant's consent, juror examined in his absence.

Distinguished in Trono v. United States, 199 U. S. 533, 50 L. 297, 26 Sup. Ct. 121, where accused is tried for murder and found guilty of assault and appeals, upon reversal of judgment he may be again tried for murder.

Syl. 3 (X, 752). Presence of accused at trial.

Approved in Ward v. Territory, 8 Okl. 13, 56 Pac. 704, under laws of Oklahoma, it is not necessary for defendant charged with felony to be present on hearing of motion for new trial; Day v. Territory, 2 Okl. 411, 37 Pac. 806, record must show affirmatively that defendant on trial for felony was personally present during entire trial; State v. Stimpson, 78 Vt. 129, 62 Atl. 16, 1 L. R. A. (N. S.) 1153, prosecutions for rape under laws of Vermont, by information, are valid.

Syl. 4 (X, 752). Hearsay testimony.

Approved in State v. Egbert, 125 Iowa, 445, 101 N. W. 191, declarations of prosecutrix in prosecution for rape made when defendant was brought before her that he was the assailant are not admissible.

Distinguished in Thompson v. United States, 144 Fed. 20, it was not error to allow witness who had identified accused in court to state his name which she had heard others call him since the transaction.

Syl. 5 (X, 753). Degree of murder—Question for jury.

Approved in Lawson v. Territory, 8 Okl. 9, 56 Pac. 701, in prosecution for murder where homicide was committed while parties were having a personal difference, it was error for court to instruct jury that crime was murder or nothing.

Syl. 6 (X, 753). Confession.

Approved in Smith v. Au Gres Twp., 150 Fed. 264, affidavit of bankrupt that he owed township certain amount of money which he had misapplied was not obtained by threats where they were made three months before the affidavit; Sorenson v. United States, 143 Fed. 823, where officer of the government authorized to investigate commission of offenses tells accused that government has a good case against him and that he had better plead guilty and throw himself on the mercy of the court, a confession so obtained is not admissible; McNish v. State, 47 Fla. 74, 36 So. 177, fact that accused was chained and officer having him in charge had a pistol in his pocket did not render confession

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inadmissible; State v. Westcott, 130 Iowa, 7, 104 N. W. 343, whether confession made by defendant after he had been examined by coroner as a witness and had spent night with sheriff, who told him before retiring to tell him all about the matter, and where on following morning he made a statement after being advised by county attorney that he was not compelled to sign it, is question for jury; State v. Nagle, 25 R. I. 110, 105 Am. St. Rep. 864, 54 Atl. 1065, where defendant was in custody on way to jail and officer told her she ought to tell the truth and that he would prefer it if it were his case, and where officer told her there was ample evidence that she bought the revolver, confession made under these circumstances was not voluntary.

Syl. 10 (X, 754). Ex post facto laws.

Approved in Goode v. State, 50 Fla. 47, 39 So. 462, under § 3, p. 58, c. 4930, Laws 1901, relating to sale of intoxicating liquors, burden was on defendant to prove liquors sold did not belong to him; Boise Irr. etc. Co. v. Stewart, 10 Idaho, 59, 77 Pac. 31, legislature has authority to provide that certain statements, maps and plats should be accepted as evidence on trial of action to establish water rights; State v. Rooney, 12 N. D. 151, 95 N. W. 515, chapter 99, Laws 1903, substituting penitentiary for county jail for place of execution, does not operate to increase punishment and is not ex post facto as to one convicted before its passage.

110 U. S. 608-619, 28 L. 258, NORTHERN BANK v. PORTER TOWNSHIP.

Syl. 3 (X, 757). Purchasers of municipal bonds.

Approved in City of Guthrie v. New Vienna Bk., 4 Okl. 217, 38 Pac. 11, c. 14, St. Okl., which attempts to impose provisional debt of Guthrie, East Guthrie, Capitol Hill and West Guthrie upon Guthrie, is void for conflict with provisions of § 4, c. 818, which prohibits municipal corporations in territories from becoming indebted in excess of four per cent on assessed value of property.

110 U. S. 619-630, 28 L. 269, McDONALD v. HOVEY.

Syl. 1 (X, 758). Statute of limitations.

Approved in Scallon v. Manhattan Ry. Co., 185 N. Y. 367, 78 N. E. 285, 286, where infancy exists when cause of action first accrues, time for commencing action is extended for certain period, but if statute has commenced to run against ancestor, it is not interrupted by his death and supervening disability of minor heirs.

Syl. 4 (X, 760). Construction of statutes.

Approved in Hemple v. Raymond, 144 Fed. 799, term "12 per centum," mentioned in Carter's Alaska Code, pt. 5, c. 27, § 255, providing for rates of interest, means "per annum"; Walker v. Globe etc. Co., 140 Fed. 307, vested rights in author to maps, etc., under U. S. Comp. St. 1901, p. 3406, are not taken away by U. S. Comp. St. 1901, pp. 3414, 3416; Schmidt v. United States, 133 Fed. 260, 66 C. C. A.

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389, provisions of U. S. Comp. St. Supp. 1903, p. 191, relating to perjury in naturalization proceedings, were not intended to lessen jurisdiction under § 5395, Rev. St.; Jarvis v. Hitch, 161 Ind. 220, 67 N. E. 1058, 1059, words "locomotive engine" used in Acts 1893, p. 294, c. 191, will be construed to have same meaning as those words had in English employer's liability act of 1880.

110 U. S. 633-651, 28 L. 279, MITCHELL v. CLARK.

Syl. 4 (X, 761). Statute of limitations.

Approved in In re Thompson etc. Co., 144 Fed. 316, attorney's fee provided for in a note payable in case of default is not a fixed liability owing at time of filing petition in bankruptcy, and is not provable against bankrupt's estate; People v. Johnson, 185 N. Y. 229, 77 N. E. 1167, Code Cr. Proc., § 392, permitting testimony of child under twelve years of age in criminal action, did not deprive defendant of due process of law.

110 U. S. 651-667, 28 L. 274, EX PARTE YARBROUGH.

Syl. 3 (X, 762). Habeas corpus.

Approved in dissenting opinion in Rush v. Buckley, 100 Me. 338, 61 Atl. 781, 70 L. R. A. 464, majority holding where plaintiff was committed for violating an unconstitutional ordinance of Augusta for driving a public carriage without a license, neither prosecutor, judge nor process server is liable for false imprisonment.

Syl. 4 (X, 763). Conspiracy.

Approved in Ex parte Riggins, 134 Fed. 421, where negro is assaulted by white men with intent to deprive him of any civil right, it is a violation of rights guaranteed him by the thirteenth amendment.

Syl. 5 (X, 764). Construction of statute—Implications.

Approved in South Carolina v. United States, 199 U. S. 451, 50 L. 265, 26 Sup. Ct. 110, state may control sale of liquor by dispensary system, but it is not exempted from operation of taxing power of national government; Ex parte Harlan, 1 Okl. 50, 27 Pac. 921, defendant having been convicted of perjury cannot have conviction reviewed on habeas corpus; Ex parte Anderson, 46 Tex. Cr. 380, 81 S. W. 976, city court has no jurisdiction to try accused for violation of state statute prohibiting sales on Sunday.

Syl. 6 (X, 764). Elections—Qualifications of voters.

Approved in Knight v. Shelton, 134 Fed. 426, action to recover damages for preventing plaintiff from voting for member of Congress arises under federal constitution; Anthony v. Burrow, 129 Fed. 788, court of equity has no jurisdiction to enjoin state officer from issuing certificate of nomination to a candidate for Congress.

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110 U. S. 667-686, 28 L. 291, ATCHISON ETC R. R. v. DENVER ETC. R. R.

Syl. 1 (X, 765). Discrimination by carriers.

Approved in Adams Express Co. v. State, 161 Ind. 346, 67 N. E. 1039, Acts 1901, p. 149, prohibiting discrimination by express company against other express companies, is not void.

Syl. 2 (X, 765). Connecting carriers.

Approved in Atchison etc. Ry. Co. v. Kansas City etc. Ry. Co., 67 Kan. 575, 70 Pac. 942, § 14, c. 286, Laws 1901, confers jurisdiction upon board of railroad commissioners only in cases of crossings and uniting of tracks of two railways.

Syl. 4 (X, 766). Carrying beyond own lines.

Approved in Southern Pac. Co. v. Interstate Com. Commission, 200 U. S. 554, 50 L. 593, 26 Sup. Ct. 301, carrier need not contract to carry goods beyond its own line, but if it does it may do so upon such lines as it chooses; Graham v. Macon etc. R. R. Co., 120 Ga. 759, 49 S. E. 76, contract by which railroad company agreed with firm that latter was to operate steamboat and each party was to deliver its freight to the other at regular rates, in consideration of which railroad company agreed to erect a hoist, is not void; Hedding v. Gallagher, 72 N. H. 382, 57 Atl. 227, 64 L. R. A. 811, common carriers of baggage in city have no right to enter railroad station to solicit business.

Syl. 5 (X, 767). Railroad regulations.

Approved in Hedding v. Gallagher, 72 N. H. 388, 57 Atl. 230, 64 L. R. A. 811, right to permit common carriers of parcels in a city to solicit business in railroad depot is within legislative control, and until legislature has acted no such privilege exists.

Syl. 6 (X, 767). Railroad rates.

Approved in Louisville etc. R. R. Co. v. West Coast Naval etc. Co., 198 U. S. 497, 49 L. 1140, 25 Sup. Ct. 745, common carrier owning wharf which it uses for transportation of goods shipped to end of its line may grant to its own agents exclusive privilege of access thereto.

110 U. S. 688-695, 28 L. 286, UNITED STATES v. BRINDLE.

Syl. 2 (X, 768). Receivers of public moneys.

Distinguished in Finley v. Territory, 12 Okl. 644, 73 Pac. 280, probate judges are entitled to retain from fees and compensation the maximum salary allowed by law, and excess must be paid into treasury, and this applies to all fees received while acting in townsite matters.

110 U. S. 695-701, 28 L. 289, RICE v. SIOUX CITY ETC. R. R. CO.

Syl. 1 (X, 769). Swamp act of 1850.

Approved in Kittel v. Trustees etc. Improvement Fund, 139 Fed. 947, swamp land act of 1850 operated as a grant in praesenti to the states of all swamp lands in their jurisdictions.

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110 U. S. 701-710, 28 L. 298, CHEELY v. CLAYTON.

Syl. 1 (X, 770). Divorce—Domicile.

Approved in dissenting opinion in Haddock v. Haddock, 201 U. S. 630, 50 L. 894, 26 Sup. Ct. 25, majority holding that where husband and wife were domiciled in New York, and husband left and acquired domicile in Connecticut, where he afterward obtained a divorce on constructive service, such judgment was not a bar to action brought by wife in New York.

Syl. 3 (X, 770). Separate domiciles after desertion.

Approved in dissenting opinion in Haddock v. Haddock, 201 U. S. 612, 50 L. 887, 26 Sup. Ct. 525, majority holding if wife is living separate from husband, without cause, his domicile is her domicile, and he may obtain divorce, although in fact she never resided there.

Syl. 3 (X, 770). Divorce—Notice to defendant.

Approved in Wallace v. Wallace, 65 N. J. Eq. 363, 54 Atl. 434, fact that plaintiff came into state for purpose of securing divorce, although she intended to remain there permanently, is not a controlling factor in the action.

Syl. 4 (X, 770). Publication of summons.

Approved in Johnson v. Hunter, 147 Fed. 138, under Laws 1893, pp. 24, 119, Laws 1895, p. 88, for enforcement of payment of levee taxes, an affidavit alleging that defendant is a nonresident of county, is absent therefrom, and that land is unoccupied, is prerequisite to service by publication.

110 U. S. 710-720, 28 L. 301, FREEDMAN'S ETC. TRUST CO. v. EARLE.

Syl. 4 (X, 771). Judgment lien.

Approved in First Nat. Bank v. Hirschkowitz, 46 Fla. 597, 35 So. 25, filing bill by creditor against married woman for purpose of subjecting her separate property to payment of her debts and appointment of receiver, gives such creditor priority over other creditors.

110 U. S. 729-741, 28 L. 308, UNITED STATES v. RYDER.

Syl. 1 (X, 772). Rights of surety.

See 99 Am. St. Rep. 487, note.

Syl. 2 (X, 773). Bail in criminal case.

See 99 Am. St. Rep. 498, note.

Syl. 5 (X, 773). Construction of statutes.

Approved in United Shoe M. Co. v. Duplessis etc. Co., 133 Fed. 933, Act March 3, 1897, c. 395, 29 Stat. 695, providing that suits for infringements of patents should be brought in district in which defendant is inhabitant, applies only to defendants who are inhabitants of some

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district and not to aliens; Schmidt v. United States, 133 Fed. C. C. A. 389, Act March 3, 1903, c. 1012, § 39, 32 Stat. 1222, pr for punishment of perjury in naturalization proceedings, did no jurisdiction under § 5395, U. S. Comp. St. 1901, p. 3654. See St. Rep. 497, note.

CXI UNITED STATES.

111 U. S. 1-17, 28 L. 331, OTOE CO. v. BALDWIN.

Syl. 3 (X, 774). Validating municipal bonds.

Approved in Potter v. Lainhart, 44 Fla. 668, 33 So. 258, up Acts 1901, c. 4912, validating county bonds issued for public i ments.

Syl. 4 (X, 774). Statutes—One subject.

Approved in Blair v. Chicago, 201 U. S. 452, 50 L. 823, 26 Sup. upholding Illinois Acts 1859, 1861, 1865, relating to street rail Chicago.

111 U. S. 17-22, 28 L. 337, LAMMON v. FEUSIER.

Syl. 1 (X, 775). Liability of marshal's sureties—Wrongful se

Approved in Gray v. Noonan, 6 Ariz. 39, 53 Pac. 7, unsatisfie ment against sheriff for wrongful taking of property under w not bar action against sheriff and sureties; Conway v. Carter, 11 433, 68 Pac. 944, upholding recovery by beneficiary under in policy against sureties of deceased administrator who had c policy.

Distinguished in Dysart v. Lurty, 3 Okl. 606, 41 Pac. 725, on marshal's bond not liable for acts of deputy seizing goods process or knowledge of principal.

111 U. S. 22-31, 28 L. 341, SWIFT CO. v. UNITED STATES.

Syl. 2 (X, 776). Payment of tax under pressure.

Approved in Lewis v. San Francisco, 2 Cal. App. 116, 82 Pa where county clerk refused to file inventory unless illegal fee payment of fees under protest was involuntary; American Brew v. St. Louis, 187 Mo. 377, 86 S. W. 132, upholding recovery of rate paid for water where ordinance required procurement of six license and payment for water in advance; State v. Murphy, 1 212, 107 N. W. 474, determining question of immunity from tion of witness before grand jury.

111 U. S. 31-38, 28 L. 338, WALSH v. MAYER.

Syl. 3 (X, 777). Recovery of usury in other state.

Approved in Gunby v. Armstrong, 133 Fed. 434, 435, 66 C. C. Louisiana statute giving right to recover usury paid cannot be e

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in federal court unless action brought within time fixed thereby; First Nat. Bank v. McCarthy, 18 S. D. 231, 100 N. W. 16, in action by national bank on usurious contract, limitations applies to counterclaim for usurious interest.

111 U. S. 38-42, 28 L. 344, UNITED STATES v. UBRICL

Syl. 2 (X, 778). Internal revenue—Lien on seized goods.

Distinguished in United States v. United States Fidelity etc. Co., 144 Fed. 867, where distillery forfeited and sold for violation of revenue laws, sureties are not entitled to have proceeds applied to taxes on product of distillery.

111 U. S. 53-61, 28 L. 349, BURROW ETC. LITHOGRAPHIC CO. v. SARONY.

Syl. 2 (X, 779). Contemporary legislative construction.

Approved in State v. Northern Pac. Ry. Co., 95 Minn. 47, 103 N. W. 732, foreign railway doing business in state is entitled to deduct bona fide indebtedness for taxable credits, though it failed to list such credits; Ex parte Anderson, 46 Tex. Cr. 399, 81 S. W. 987, city court has no jurisdiction to try accused for violation of state penal statute.

Syl. 3 (X, 779). Copyright.

Approved in White etc. Pub. Co. v. Apollo Co., 139 Fed. 430, copyright of printed musical composition not infringed by perforated record for use on mechanical instrument.

Syl. 4 (X, 779). Copyright of photographs.

Approved in American Mutoscope etc. Co. v. Edison Mfg. Co., 137 Fed. 265, upholding copyright of photograph taken for moving picture machine; Werckmeister v. American Lith. Co., 134 Fed. 330, 68 L. R. A. 591, arguendo.

111 U. S. 66-83, 28 L. 354, CANAL BANK v. HUDSON.

Syl. 4 (X, 780). Purchase at judicial sale—Outstanding claims.

Approved in Sunter v. Sunter, 190 Mass. 458, 77 N. E. 499, in action by two wards against third to avoid indirect sale to guardian who afterward conveyed to defendant, plaintiffs may set off share of rents during guardian's occupation against latter's improvements.

111 U. S. 83-97, 28 L. 360, DIXON CO. v. FIELD.

Syl. 2 (X, 780). Estoppel of county by recitals in bonds.

Distinguished in Platt v. Hitchcock Co., 139 Fed. 932, 933, where county commissioners having power to issue precinct bonds up to ten per cent of last assessment issued bonds reciting issuance according to statutes, made assessment five days prior to issuance which it could have modified later, recitals estop county from asserting falsity as against bona fide purchaser.

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Syl. 4 (X, 783). Municipal bonds—Debt limit—Recitals.

Approved in Sauer v. Gillett, 20 Colo. App. 372, 78 Pac. 1070, under Mills Ann. St., § 4403, subd. 6, demand bonds issued under ordinance not providing for levy are invalid in hands of bona fide holders; Martin v. Territory, 5 Okl. 194, 48 Pac. 108, holding void city warrants issued under court decree where at time of issuance city debt exceeded statutory limit; City of Guthrie v. New Vienna Bank, 4 Okl. 211, 216, 218, 38 Pac. 10, 11, 12, holding void St. Okl., c. 14, attempting to impose provisional debts of certain towns on city of Guthrie, as violating statute limiting city debts.

111 U. S. 110-117, 28 L. 368, TAYLOR v. BOWKER.

Syl. 2 (X, 784). Limitations—Judgment creditors of corporation.

Approved in Blackwell v. Hatch, 13 Okl. 173, 73 Pac. 934, limitations on action in nature of creditor's bill runs for return of execution nulla bona and not from date of fraudulent transfer.

Syl. 3 (X, 784). Equity—Creditors—Exhaustion of legal remedies.

Approved in State Bank v. Belk, 68 Neb. 519, 94 N. W. 619, upholding creditor's suit by judgment creditor where judgment debtor has fraudulently conveyed property.

111 U. S. 117-120, 28 L. 373, MOORE v. PAGE.

Syl. 1, (X, 785). Fraudulent conveyance—Gift to wife.

Approved in Aldous v. Olverson, 17 S. D. 200, 95 N. W. 920, conveyance by husband to wife not made to defraud subsequent creditors cannot be complained of by them, though intended to defraud existing creditors.

111 U. S. 120-122, 28 L. 371, GARRETSON v. CLARK.

Syl. 1 (X, 786). Patent improvement infringement—Profits.

Approved in Force v. Sawyer-Boss Mfg. Co., 143 Fed. 900, Baker v. Crane Co., 138 Fed. 61, 70 C. C. A. 486, and New York Bank Note Co. v. Hamilton Bank Note Co., 180 N. Y. 296, 73 N. E. 53, all following rule; Eastern Paper Bag Co. v. Continental etc. Bag Co., 142 Fed. 519, where patent infringed by machines made and used, but not sold, and product of machine has no superiority giving it increased value, savings by use of patented device are only profits recoverable; Fox v. Knickerbocker Eng. Co., 140 Fed. 715, both profits and damages are recoverable in infringement; Westinghouse v. New York Air Brake Co., 140 Fed. 549, 552, applying rule in accounting for profits for infringement of Westinghouse patent No. 376,837, for quick action triple valve for air-brakes where complete brakes only sold; Brinton v. Paxton, 134 Fed. 80, 67 C. C. A. 204, where profit made on patented part alone shown separate from that on machine as whole and no substitute on market, complainant may recover such profits.

Distinguished in Regis v. Jaynes, 191 Mass. 251, 77 N. E. 777, determining damages on accounting for profits of defendants who had been restrained from infringing trademark.

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111 U. S. 125-134, 28 L. 374, PHOENIX BANK v. RISLEY.

Syl. 2 (X, 787). Bank deposits—Relation of debtor and creditor.

Approved in Schinotti v. Whitney, 130 Fed. 781, money deposited in bank in New York at interest and subject to check is "money lent" to banker within Civ. Code La., art. 3538, prescribing limitations for recovery thereof.

111 U. S. 138-148, 28 L. 379, NEW ENGLAND MUT. LIFE INS. CO. v. WOODWORTH.

Syl. 4 (X, 789). Jurisdiction—Foreign corporation doing business.

Approved in Kibbler v. St. Louis etc. R. Co., 147 Fed. 881, 882, foreign corporation which under state law can be sued in counties where it does business can be sued in federal court only if it does business in one of counties of district; Groel v. United Elec. Co., 69 N. J. Eq. 419, 60 Atl. 830, determining that foreign corporation was doing business in state so as to be sued by service on process agent.

111 U. S. 148-155, 28 L. 382, COOPER v. SCHLESINGER.

Syl. 2 (X, 790). Avoidance of contract—False statements.

Approved in United States v. Bradford, 148 Fed. 424, applying rule in prosecution for conspiracy to defraud government out of land scrip, in furtherance of which pretended administrator falsely procured to be appointed for estate of one to whom land claim confirmed; Pittsburg Land etc. Co. v. Northern etc. Ins. Co., 140 Fed. 893, where in examination of insurance company prior to sale of its business printed list of policies used which had been prepared for and used by company, errors in list are not basis for action for deceit; Kimber v. Young, 137 Fed. 748, 70 C. C. A. 178, false statements on sale of bonds that seller knew bonds good and that they would be paid at maturity do not form basis for action for deceit.

111 U. S. 156-170, 28 L. 285, MOORES v. CITIZENS' NAT. BANK.

Syl. 1 (X, 790). Stock certificate as estopping corporation.

Approved in Westminster Bank v. New England etc. Works, 73 N. H. 475, 111 Am. St. Rep. 640, 62 Atl. 973, where stock certificate recites person to whom issued is owner of fully paid stock, corporation cannot deny title of bona fide purchaser on ground that stockholder paid nothing, and law prohibits issuance of stock till fully paid.

Syl. 3 (X, 791). Liability of corporation for acts of officer.

Approved in Hier v. Miller, 68 Kan. 266, 75 Pac. 79, 63 L. R. A. 952, where bank cashier paid debts by entering credit on depositor's book and permitted him to check out, bank may recover of creditor moneys so paid out.

111 U. S. 176-185, 28 L. 390, COVELL v. HEYMAN.

Syl. 2 (X, 792). Property attached—Interference by other court.

Approved in Fountain v. 624 Pieces of Timber, 140 Fed. 381, following rule; In re Mertens, 131 Fed. 515, where bankrupt's trustee took

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possession of property in hands of bankrupt at time of petition, and seller to bankrupt did not elect to rescind for fraud till after proceedings, trustee not liable to him for conversion; Beardslee v. Ingraham, 183 N. Y. 418, 76 N. E. 477, where federal court issued attachment for corporation's property, which was filed in office of clerk of district where property located, state court in which suit to dissolve corporation filed could not enjoin marshal from selling property on execution; French v. White, 78 Vt. 96, 62 Atl. 36, 2 L. R. A. (N. S.) 804, property vesting in bankruptcy trustee is not attachable in state court.

Syl. 4 (X, 794). Conflicting state and federal jurisdiction.

Approved in Security Trust Co. v. Union Trust Co., 130 Fed. 302, federal court refuses to enforce lien on rolling stock, where state court has appointed receiver on foreclosure and ordered sale; Guaranty Trust Co. v. North Chicago St. R. Co., 130 Fed. 807, 65 C. C. A. 65, pendency of federal creditor's suit against railroad for which receiver appointed, but which road is operated under lease by receiver of lessee, does not exclude state suit by stockholders to enjoin delivery of amended lease.

111 U. S. 185-196, 28 L. 395, ROSENTHAL v. WALKER.

Syl. 1 (X, 795). Limitations—Bankruptcy—Fraudulent transfer.

Approved in New England Ins. Co. v. Swain, 100 Md. 574, 60 Atl. 472, in action against insurance company for damages for fraudulent conduct of agent, it is for jury to say whether plaintiff sued within three years after he could with reasonable diligence have discovered fraud; Mullen v. Walton, 142 Ala. 173, 39 So. 99, where testator created trust in favor of minor child, appointing widow as trustee, and later widow wrote child she had lost money left to child and would leave it her property, child could maintain bill against widow's administrator for settlement of trust; dissenting opinion in Atchison etc. Ry. Co. v. Grain Co., 68 Kan. 597, 75 Pac. 1055, majority holding averment in action for violation of agreement against discriminations, that defendant succeeded in concealing fact of discriminations until eighteen months prior to suit, does not suspend limitations; dissenting opinion in Rauch v. Millers Mut. Fire Ins. Co., 131 Mich. 284, 91 N. W. 161, majority holding where insured writes insurer that he has taken out additional insurance and that if it conflicts with policy to advise him, and insurer does not answer, he is estopped to avoid policy.

Syl. 4 (X, 796). Presumption for mailing of letter.

Approved in Davidson S. S. Co. v. United States, 142 Fed. 318, applying rule to mailing of marine notice; Christensen Engineering etc. Co. v. Westinghouse Air-brake Co., 135 Fed. 777, 68 C. C. A. 476, upholding sufficiency of service by mail of injunction against infringement of patent; Sherrod v. Farmers' etc. Ins. Assn., 139 N. C. 169, 51 S. E. 911, where insurer shows notice of assessment mailed, properly addressed and stamped, law presumes its receipt.

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111 U. S. 216-223, 28 L. 406, BURLEY v. GERMAN-AMER. BANK.

Syl. 2 (X, 798). Answer—Denial of allegations.

Distinguished in Berry v. Barton, 12 Okl. 238, 71 Pac. 1080, 66 L. R. A. 513, where note payable to person named or order is not paid, answer denying payee who sues thereon is owner and alleging he is not real party in interest, states no defense.

(X, 798.) Miscellaneous. Cited in Bishop Co. v. Shelhorse, 141 Fed. 646, upholding, under Virginia practice, declaration alleging in one count separate acts of negligence, either one of which is sufficient basis for action.

111 U. S. 228-242, 28 L. 410, HAYES v. MICHIGAN CENT. R. R.

Syl. 2 (X, 799). Ordinance granting right of way.

Approved in Heidt v. Southern Tel. Co., 122 Ga. 480, 50 S. E. 364, ordinance granting telephone franchise requiring space of three feet where wires cross electric light wire, and imposing cost of expense of raising or lowering wires and placing guards on company doing latest construction, imposes duty of placing guards on latter.

Distinguished in Seymour v. Union Stockyards Co., 224 Ill. 586, 79 N. E. 951, upholding exclusion of city ordinance in action for injuries to child by train where it was attracted to right of way by clay piled thereon.

Syl. 3 (X, 799). Ordinance regulating railroad operation.

Approved in Shellaberger v. Fisher, 143 Fed. 939, absence of operator for automatic elevator in city where duty to employ operator imposed by ordinance is actionable where child injured.

Distinguished in Clemans v. Chicago etc. Ry. Co., 128 Iowa, 397, 104 N. W. 432, city railroad speed ordinance is inapplicable in favor of trespasser injured by train within city limits; Memphis St. Ry. Co. v. Haynes, 112 Tenn. 720, 81 S. W. 375, holding failure to comply with ordinance requiring street-car men to keep vigilant lookout and to stop on first appearance of danger, not negligence per se; dissenting opinion in Sluder v. St. Louis Transit Co., 189 Mo. 166, 167, 88 S. W. 663, 664, majority holding breach of city ordinance requiring motorman to keep vigilant watch for vehicles, and to stop on first appearance of danger, is negligence.

Syl. 5 (X, 800). Negligence of railroad—Proximate cause.

Approved in Shellaberger v. Fisher, 143 Fed. 941, applying rule where city ordinance imposed duty of employing elevator operator and child injured by automatic elevator; Shugart v. Atlanta etc. Ry., 133 Fed. 510, 66 C. C. A. 379, where derailment of engine on which plaintiff working would not have happened but for defects in track, whether defects were proximate cause is for jury, though speed of train might have contributed to accident; Meisner v. City of Dillon, 29 Mont. 122, 74 Pac. 131, city is liable where horse becoming frightened comes in

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contact with defect in street negligently left unrepaired. See 113 Am. St. Rep. 988, note.

111 U. S. 242-252, 28 L. 415, TEAL v. WALKER.

Syl. 1 (X, 801). Answer as waiving erroneous overruling of demurrer.

Approved in Williamson v. Liverpool etc. Ins. Co., 141 Fed. 58, where motion to strike out portion of petition erroneously sustained, error not waived by filing amended petition omitting parts stricken out.

Syl. 2 (X, 802). Absolute deed as mortgage.

Approved in Weiseham v. Hocker, 7 Okl. 253, 54 Pac. 465, following rule.

111 U. S. 252-263, 28 L. 419, BORS v. PRESTON.

Syl. 2 (X, 804). Federal jurisdiction must affirmatively appear.

Approved in Edelstein v. United States, 140 Fed. 639, where after debtor adjudged bankrupt he applied for discharge, adjudication not collaterally attackable in proceeding against bankrupt for taking false oath, for defects in petition; Dodd v. Louisville Bridge Co., 130 Fed. 193, denying removability of suit against corporation formed by consolidation of corporations of several states.

Syl. 3 (X, 804). Exclusiveness of supreme court's jurisdiction—Consuls.

Approved in Higgins v. Tax Assessors of Pawtucket, 27 R. I. 408, 63 Atl. 37, Practice Act 1905, p. 4, § 12, giving superior court jurisdiction to issue extraordinary writs, does not violate Const. Amend., art. 12, giving supreme court power to issue prerogative writs.

111 U. S. 264-276, 28 L. 423, LOVELL v. ST. LOUIS MUT. LIFE INS. CO.

Syl. 4 (X, 805). Dissolution of corporation.

Approved in In re Imperial Brewing Co., 143 Fed. 582, adjudication in bankruptcy is not repudiation by bankrupt of contract to purchase products during term of years so as to give seller right to prove damages against estate where time of performance has not arrived; Mutual etc. Life Assn. v. Ferrenbach, 144 Fed. 343, 346, 347, where policy wrongfully canceled for nonpayment of assessments, and pending action plaintiff died, damages are amount of policy less cost of carrying it to maturity; Summers v. Mutual Life Ins. Co., 12 Wyo. 390, 109 Am. St. Rep. 1005, 75 Pac. 942, 66 L. R. A. 812, where plaintiff gave note for which insurer was to execute policy within stated time, and insurer received proceeds of note but failed to deliver policy, insured may recover money advanced.

Limited in Vette v. Evans, 111 Mo. 595, 86 S. W. 506, where insurance company sold assets some time after issuance of policy, insured

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relieved from liability on premium note only to extent of value of insurance for time subsequent to transfer.

Syl. 5 (X, 805). Prevention of performance of executory contract.

Approved in Barker etc. Lumber Co. v. Edward Hines L. Co., 137 Fed. 308, construing contract for sawing logs; Cooley v. Moss, 123 Ga. 709, 51 S. E. 626, where land owner agrees to sell certain lot, but deed not to be made till other land sold, and lot sold before other land, action for breach maintainable though other land not sold; Merrick v. Northwestern Nat. Life Ins. Co., 124 Wis. 226, 109 Am. St. Rep. 931, 102 N. W. 594, where insurer wrongfully forfeited policy, beneficiary may, during insured's life, recover value of policy at time of forfeiture.

111 U. S. 276-293, 28 L. 427, RECTOR v. GIBBON.

Syl. 1 (X, 806). Estoppel to deny landlord's title.

Approved in Harvin v. Blackman, 112 La. 31, 36 So. 215, following rule; Hagar v. Wikoff, 2 Okl. 588, 39 Pac. 283, applying rule to lease of townsite lot.

Syl. 2 (X, 806). Trespasser on public lands.

Approved in Downman v. Saunders, 3 Okl. 234, 41 Pac. 107, one who forcibly enters into the possession of another on townsite and ejects him cannot defeat prior settler because of meagerness of improvements; Knepper v. Sands, 194 U. S. 485, 48 L. 1086, 24 Sup. Ct. 744, arguendo.

Syl. 4 (X, 806). Conclusiveness of land decision.

Approved in McDonald v. Union P. R. Co., 70 Neb. 350, 97 N. W. 441, denying jurisdiction to compel conveyance of homestead lands to one denied privilege of entry by Land Department; Twine v. Carey, 2 Okl. 254, 37 Pac. 1098, refusing to review decision of townsite trustees; Smith v. Townsend, 1 Okl. 122, 29 Pac. 82, where land officials draw legal conclusion from known facts and issue patent, equity may entertain suit to decree patentee a trustee and to compel conveyance of legal title.

Syl. 5 (X, 806). Legal as trustee for equitable owner.

Approved in Brown v. Parker, 2 Okl. 266, 39 Pac. 569, following rule; Thompson v. Ferry, 6 Ariz. 307, 56 Pac. 743, where cotenant's mortgage foreclosed and premises bought by mortgagee, who sold interest to grantee, who relocated same and obtained patent and sold same, other cotenants estopped from claiming interest after ten years.

111 U. S. 293-313, 28 L. 433, COCHRANE v. BADISCHE ANILIN ETC. FABRIK.

Syl. 5 (X, 807). Process patent.

Approved in Victor Talk. Mach. Co. v. American Graph. Co., 145 Fed. 192, limiting Berliner patent No. 548,623, for duplicate sound records and method of making same; Societe Fabriques v. Lueders, 135 Fed. 103, Baur patent No. 451,847, for artificial musk, is void in view of disclaimer of process of patent No. 416,710 to same inventor;

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American Tube Wks. v. Bridgewater Iron Co., 132 Fed. 17, 65 C. C. A. 636, holding Adams patent No. 24,915, for cast copper tubes, anticipated.

111 U. S. 313-319, 28 L. 440, ARMOUR v. HAHN.

Syl. 1 (X, 808). Master—Providing safe place to work.

Approved in Gans Salvage Co. v. Byrnes, 102 Md. 244, 62 Atl. 157, master not liable for injuries to wrecker where brick shaft left standing after burning of building was apparently safe; Ziegenmeyer v. Goetz Lime etc. Co., 113 Mo. App. 336, 88 S. W. 141, where servant employed in quarry knew of danger from falling rocks and on being warned stepped into known defective chimney and was injured by falling rock, master not liable; Smith v. Hecla Min. Co., 38 Wash. 461, 80 Pac. 781, master not liable for injuries to mine laborer engaged in removing rock thrown down in blasting; Cully v. Northern Pac. Ry. Co., 35 Wash. 247, 77 Pac. 203, applying principle where railroad workman employed in taking gravel from bank and loading it on cars; Kalte v. Wisconsin Central Ry. Co., 121 Wis. 514, 99 N. W. 221, railroad not liable for injuries to engineer running engine on to known burning bridge, though other employees failed to put out signals.

Distinguished in Chambers v. American Tin Plate Co., 129 Fed. 562, 64 C. C. A. 129, building contractor employing boss carpenter to build scaffold for bricklayers is liable for injury to bricklayer by negligent construction; Rigsby v. Oil Well Supply Co., 115 Mo. App. 319, 91 S. W. 466, master liable to servant injured by falling of pile of planks piled negligently by other servants.

Syl. 2 (X, 808). Negligence of fellow-servant—Defective appliance.

Approved in American Bridge Co. v. Seeds, 144 Fed. 613, master not liable for injuries to servant where false work for rebuilding bridge constructed with uncovered spaces and servant was knocked off by crane because of inopportune signal of foreman; Deye v. Lodge etc. Tool Co., 137 Fed. 484, 70 C. C. A. 64, company piling up, under direction of foreman, lathe beds until wanted not liable for injuries to servant by slipping of casting on account of negligence in piling; Galow v. Chicago etc. Ry. Co., 131 Fed. 243, 65 C. C. A. 507, where plank partition erected by workmen to separate stone and sand dumped under trestle in making concrete, broke, master not liable for injury to servant; Southern Indiana Ry. Co. v. Harrell, 161 Ind. 698, 68 N. E. 265, 63 L. R. A. 460, where railroad bridge workman sat down during temporary respite from work and was injured by rock being negligently raised by derrick, master not liable; Meehan v. St. Louis etc. R. R. Co., 114 Mo. App. 403, 90 S. W. 104, master not liable to servant injured in laying railroad track because of looseness of track; Herbert v. Wiggins Ferry Co., 107 Mo. App. 300, 80 S. W. 981, master not liable for injuries to servant where one of them selected worn rope to hold wheel which they were dismantling.

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Distinguished in McGill v. Southern Pac. Co., 4 Ariz. 124, 33 Pac. 822, section foreman is not fellow-servant of conductor of work train on which he is carried to work.

111 U. S. 335-346, 28 L. 447, MOULOR v. AMERICAN LIFE INS. CO.

Syl. 3 (X, 810). Insurance—Statement in application as warranties.

Approved in Doll v. Equitable Life Assur. Society, 138 Fed. 707, representations in application as to insured's family history as to consumption and as to his health history are warranties.

Syl. 4 (X, 810). Insurance policy construed against insurer.

Approved in Mutual Reserve Ins. Co. v. Dobler, 137 Fed. 556, 70 C. C. A. 134, where insured stated in application that he had not consulted physician for years, fact that physician friend had examined him on physician's own initiative without cost does not show answer untrue; O'Connor v. Grand Lodge A. O. U. W., 146 Cal. 491, 80 Pac. 691, holding literal truthfulness of answers in medical examination for membership in benefit society not required; German-American Ins. Co. v. Yeagley, 163 Ind. 659, 71 N. E. 900, applying rule where fire policy provided for avoidance in case of encumbrances, agent accepting premiums with knowledge of mortgage waives forfeiture; Offineer v. Brotherhood of American Yeomen, 109 Mo. App. 75, 83 S. W. 68, misrepresentation in application must be material to avoid risk; Guthrie Nat. Bank v. Fidelity etc. Co., 14 Okl. 640, 79 Pac. 103, construing statements in application for fidelity insurance not to be warranties; Woodmen of the World v. Gilliland, 11 Okl. 404, 67 Pac. 491, construing provision as to intemperate use of drugs; Tucker v. Colonial Fire Ins. Co., 58 W. Va. 36, 51 S. E. 88, provision in policy for inventory at least once a year gives assured one year from date of policy to take inventory though policy runs one year only; dissenting opinion in Atlas Red. Co. v. New Zealand Ins. Co., 138 Fed. 511, majority construing "loss payable" indorsement on insurance policy.

Distinguished in Mutual Life Ins. Co. v. Arhelger, 4 Ariz. 277, 273, 36 Pac. 896, answers of insurance applicant that he has not consulted physician since childhood, and does not remember name, are warranties.

Syl. 5 (X, 812). Insurance policy controls application.

Approved in Brignac v. Pacific Mutual Life Ins. Co., 112 La. 586, 587, 36 So. 599, 66 L. R. A. 322, and Logan v. Provident etc. Assurance Society, 57 W. Va. 388, 393, 50 S. E. 530, 533, both following rule; Supreme Conclave v. Wood, 120 Ga. 336, 47 S. E. 941, where application covenants truth of statements to medical examiner, and they are made part of contract, policy cannot be avoided for falsity thereof unless they are material and change risk; Aetna Life Ins. Co. v. Rehlaender, 68 Neb. 292, 94 N. W. 132, statement signed by assured at agent's request to obtain revival of policy as to health is representation merely.

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111 U. S. 347-350, 28 L. 451, UNITED STATES v. CARPENTER.

Syl. 1 (X, 812). Withdrawal of Indian lands by treaty.

Approved in Winters v. United States, 143 Fed. 748, grantees of lands outside of Ft. Belknap Indian reservation did not acquire exclusive rights to waters of Milk river for irrigation under desert land act as against Indians.

111 U. S. 350-356, 28 L. 452, CHAMBERS v. HARRINGTON.

Syl. 1 (X, 813). Jurisdiction—Contest over mining claim.

Approved in Nome-Sinook Co. v. Simpson, 1 Alaska, 584, adverse suit by applicant for mining patent is maintainable in district court of Alaska; Nome-Sinook Co. v. Simpson, 1 Alaska, 583, municipal corporation, though not adverse claimant in land office proceedings, may intervene in suit against adverse claimant by applicant for patent and protect its property within location by showing neither complied with law.

Syl. 3 (X, 813). Assessment work by co-owners of several claims.

Distinguished in Hain v. Mattes, 34 Colo. 352, 353, 83 Pac. 129, 130, work done in tunnel may be applied as work on mining location though person working does not own continuous strip from portal to location.

111 U. S. 356, 357, 28 L. 454, EILERS v. BOATMAN.

Syl. 1 (X, 814). Sufficiency of notice of location question of fact.

Approved in Price v. McIntosh, 1 Alaska, 301, where junior locator attempts to relocate excess in area in placer claim, he must locate some portion of excess not actually occupied by senior locator; Redden v. Harlan, 2 Alaska, 407, and Bulette v. Dodge, 2 Alaska, 431, both arguendo.

Syl. 2 (X, 814). Conclusiveness of territorial court's findings.

Distinguished in De La Rama v. De La Rama, 201 U. S. 309, 50 L. 767, 26 Sup. Ct. 485, reviewing sufficiency of evidence in divorce on appeal from Philippine supreme court taken under Act of July 1, 1902, § 10.

111 U. S. 358-361, 28 L. 455, HOUSTON ETC. RY. v. SHIRLEY.

Syl. 3 (X, 815). Removal where trustees substituted.

Approved in Nash v. McNamara, 145 Fed. 543, parties brought in by cross-complaint alleging they claim interest, who file complaint alleging succession to rights of plaintiff, cannot remove as defendants.

111 U. S. 363-373, 28 L. 457, BLAIR v. CUMING COUNTY.

Syl. 2 (X, 815). County bonds signed by chairman and clerk.

Approved in Potter v. Lainhart, 44 Fla. 659, 33 So. 255, upholding county bonds signed by chairman of county commissioners, attested by clerk and countersigned by county treasurer, and reciting they are county bonds; dissenting opinion in Wright v. East Riverside Irr.

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Dist., 138 Fed. 326, majority holding where coupons on bonds issued under Cal. St. 1887, p. 35, § 35, were signed by predecessor of secretary in office when delivered, they were void.

111 U. S. 379-389, 28 L. 462, MANSFIELD ETC. RY. v. SWAN.

Syl. 1 (X, 816). Removal—Citizen of territory.

Approved in Kansas City etc. Ry. Co. v. McGinty, 76 Ark. 362, 88 S. W. 1003, action for death by wrongful act of citizen of Indian Territory against citizen of state is not removable.

Syl. 3 (X, 816). Diverse citizenship must appear in record.

Approved in Southern Ry. Co. v. Thomason, 146 Fed. 974, controversy partly between citizens of same state is not removable for local prejudice; International etc. R. Co. v. Hoyle, 149 Fed. 182, where action against two joint defendants is removed, it may be remanded at instance of any party where it is not removable for want of separable controversy; Utah-Nevada Co. v. De Lamar, 133 Fed. 121, 66 C. C. A. 179, assignee of oral contract cannot sue in federal court to recover money due thereon where assignor could not sue therein.

Syl. 4 (X, 817). Reversal sua sponte—Citizenship.

Approved in Minnesota v. Northern Securities Co., 194 U. S. 63, 48 L. 877, 24 Sup. Ct. 598, Perez v. Fermandez, 202 U. S. 100, 50 L. 949, 26 Sup. Ct. 561, and Kansas City etc. Ry. Co. v. Prunty, 133 Fed. 15, 66 C. C. A. 163, all following rule; Kentucky v. Powers, 201 U. S. 35, 50 L. 649, 26 Sup. Ct. 387, nonrecognition by state courts of pardon pleaded in bar does not make removable cause under Rev. St., § 641; Thomas v. Ohio State University Trustees, 195 U. S. 211, 49 L. 164, 25 Sup. Ct. 24, denying sufficiency of allegation of citizenship of Ohio university trustees where statute creating board did not confer corporate powers on it; Utah-Nevada Co. v. De Lamar, 133 Fed. 117, 66 C. C. A. 179, objection to circuit court's jurisdiction because action based on assigned contract and it does not appear assignor could sue therein, need not appear in assignment of errors; Myers v. Berry, 3 Okl. 617, 41 Pac. 582, denying equity jurisdiction to annul final action of townsite trustees.

Syl. 6 (X, 818). Costs for wrongful removal.

Approved in Kansas City etc. Ry. Co. v. Prunty, 133 Fed. 16, 66 C. C. A. 163, and Knight v. Lutcher etc. Lumber Co., 136 Fed. 406, 69 C. C. A. 248, both following rule.

Syl. 7 (X, 818). Costs on dismissal of appeal.

Approved in Frye v. Miley, 54 W. Va. 334, 46 S. E. 139, party suing in equity court having no jurisdiction and obtaining decree which is reversed is not entitled to costs in appellate court.

Syl. 9 (X, 819). Removal—Reversal and remand with costs.

Approved in Alexander v. Crollott, 199 U. S. 581, 50 L. 317, 26 Sup. Ct. 161, void judgment may be reversed on appeal; Rhyne v. Manchester

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Assur. Co., 14 Okl. 558, 78 Pac. 559, party appealing to district court from probate court may question former court's jurisdiction.

111 U. S. 389-395, 28 L. 468, HORNBUCKLE v. STAFFORD.

Syl. 2 (X, 819). Judgments—Parol to show issues.

Approved in Security Trust Co. v. Robb, 142 Fed. 84, applying rule in action against indemnitor of surety and forthcoming replevin bond.

111 U. S. 395-400, 28 L. 466, GAINES v. MILLER.

Syl. 2 (X, 820). Action—Money received for other's benefit.

Approved in Cosmopolitan Life Ins. Co. v. Koegel, 104 Va. 632, 52 S. E. 171, beneficiary in benefit certificate after death of member may sue one who agreed with society to pay its debts in consideration of transfer of its assets; Langhorne v. McGhee, 103 Va. 288, 49 S. E. 46, where partner executed note in satisfaction of liability on firm debt and reduced it from individual estate, trustee for payment of firm's debts, who paid more than amount due on notes, could recover overplus from payee.

Distinguished in Southern Pac. R. Co. v. United States, 133 Fed. 658, 66 C. C. A. 581, upholding equity jurisdiction over suit by United States against railroad, its mortgagees, and others to determine rights to lands erroneously patented to company under grant, rights of bona fide purchasers and accounting from company for lands sold.

Syl. 3 (X, 820). Equity—Adequacy of law, remedy.

Approved in Barchent v. Snyder, 128 Wis. 425, 107 N. W. 329, denying equity jurisdiction where plaintiff deeded land as security under agreement for reconveyance on payment of loan and defendant wrongfully sold and prayed that contract be declared mortgage, and for accounting for difference between debt and price.

Syl. 5 (X, 820). Judgment presumed paid from limitations.

Approved in Chiler v. School District, 103 Mo. App. 246, 77 S. W. 83, following rule; Cobb v. Houston, 117 Mo. App. 655, 94 S. W. 302, absence of judgment debtor from state does not affect running of time in favor of presumption of payment.

(X, 820.) Miscellaneous. Cited in State v. Bradley, 193 Mo. 44, 91 S. W. 486, where attorneys A, B, & C prosecuted action for which B collected fee, in suit by A against B, for his share, C not necessary party.

111 U. S. 400-412, 28 L. 470, CLAIBORNE COUNTY v. BROOKS.

Syl. 1 (X, 820). Issuance of commercial paper by counties.

Approved in Oklahoma etc. College v. Willis, 6 Okl. 599, 52 Pac. 923, 40 L. R. A. 677, agricultural and mechanical college cannot be sued; Luther v. Wheeler, 73 S. C. 91, 93, 52 S. E. 876, 877, where officers of town of less than one thousand inhabitants under resolution give note for money for public building, holder may recover amount used by town though note void.

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111 U. S. 412-440, 28 L. 316, SLIDELL v. GRANDJEAN.

Syl. 4 (X, 823). Treaty—Protection of titles.

Cited in Corkran Oil etc. Co. v. Arnaudet, 111 La. 577, 35 So. 753, arguendo.

Syl. 6 (X, 823). State grants construed against grantee.

Approved in Blair v. Chicago, 201 U. S. 473, 50 L. 831, 26 Sup. Ct. 427, construing Chicago street railway franchise acts; Knoxville Water Co. v. Knoxville, 200 U. S. 34, 50 L. 359, 26 Sup. Ct. 224, municipal grant of waterworks franchise does not impliedly devest city of power to construct own waterworks.

Syl. 7 (X, 824). Confirmation of land grant.

Approved in Catron v. Laughlin, 11 N. M. 632, 72 Pac. 32, following rule.

111 U. S. 449-472, 28 L. 482, AMES v. KANSAS.

Syl. 4 (X, 826). Investment of inferior courts with jurisdiction.

Approved in Higgins v. Tax Assessors of Pawtucket, 27 R. I. 408, 63 Atl. 37, Practice Act 1905, p. 4, § 12, giving superior court jurisdiction of extraordinary writs, does not violate Const. Amend., art. 12, giving supreme court power to issue prerogative writs.

Syl. 5 (X, 826). Removal of quo warranto by state.

Approved in Southern Ry. Co. v. State, 165 Ind. 617, 75 N. E. 273, action in name of state by prosecuting attorney against railroad for recovery of statutory penalties is not removable.

111 U. S. 472-477, 28 L. 491, ALLEY v. NOTT.

Syl. 1 (X, 826). Removal—Demurrer as trial.

Approved in Park etc. Co. v. Bruen, 139 Fed. 699, failure to expressly state that dismissal was on merits does not permit new suit for same cause of action, without examination as to whether dismissal was on merits; Atlanta etc. Ry. Co. v. Southern Ry. Co., 131 Fed. 661, 66 C. C. A. 601, hearing of motion to dissolve restraining order on ex parte affidavits, in chambers, does not preclude removal; State v. District Court, 32 Mont. 42, 79 Pac. 548, submission of motion for judgment on pleadings is trial within Code Civ. Proc., § 1004, subd. 1, providing for dismissal at any time before trial.

(X, 826.) Miscellaneous. Cited in Morris v. Dunbar, 149 Fed. 407, as to practice when demurrer sustained.

111 U. S. 479-486, 28 L. 478, ANDERSON v. PHILADELPHIA WAREHOUSE CO.

Syl. 3 (X, 828). Pledgee's liability as stockholder.

Approved in Hulitt v. Ohio Val. Nat. Bank, 137 Fed. 464, 69 C. C. A. 609, where defendant holding national bank stock as pledgee caused stock to be transferred on books to employee after death of pledgor, and

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collected from estate balance of debt after deducting amount indorsed on note secured, defendant liable for assessment.

111 U. S. 486, 487, 28 L. 481, TEXAS ETC. R. R. CO. v. KIRK.

Syl. 1 (X, 829). Amendment of writ of error wrongly attested.

Approved in Long v. Farmers' State Bank, 147 Fed. 362, refusing to dismiss writ of error attested by judge and clerk of district court.

111 U. S. 488-490, 28 L. 492, TEXAS ETC. RY. v. MURPHY.

Syl. 1 (X, 829). Rehearing as stay.

Approved in Klein v. Southern Pac. Co., 140 Fed. 214, mere filing of motion for new trial in due time without order of court does not carry matter over term.

111 U. S. 499-505, 28 L. 496, UNITED STATES v. BRYANT.

Syl. 2 (X, 830). Costs bond by United States.

Distinguished in United States v. Choctaw etc. R. R. Co., 3 Okl. 454, 41 Pac. 746, Rev. St. U. S., § 1001, relating to bond for costs by United States, does not apply to case brought from territorial district court to supreme court of teritory.

111 U. S. 505-522, 28 L. 498, PACIFIC R. R. v. MISSOURI PAC. R. R.

Syl. 2 (X, 830). Demurrer to bill, good in part.

Approved in Hume v. Laurel Hill Cemetery, 142 Fed. 563, holding void ordinance prohibiting burials within entire county, embracing large tracts of unoccupied land.

Syl. 4 (X, 831). Laches—Setting aside fraudulent foreclosure.

Approved in Nelson v. Meehan, 2 Alaska, 490, judgment obtained by fraud and perjury may be set aside after term and after affirmance on appeal.

Syl. 5, (X, 831). Federal ancillary jurisdiction—Citizenship.

Approved in O'Connor v. O'Connor, 146 Fed. 997, in equity suit to set aside dismissal of law action, service may be made on defendants though they reside out of district; Hatcher v. Hendrie etc. Supply Co., 133 Fed. 270, 68 C. C. A. 19, applying rule to equity suit to enforce attachment lien obtained in former action, and to subject attached property to satisfaction of judgment; Manning v. Berdan, 132 Fed. 383, 384, 385, bill in federal equity court to enjoin law action by nonresident defendant in latter against plaintiff and nonresident corporation which is not party is not ancillary so as to give jurisdiction over corporation by service on its attorneys, or on corporation outside district; Hampton Roads Ry. etc. Co. v. Newport News etc. Elec. Co., 131 Fed. 536, federal court appointing receiver to operate railroad for creditors has ancillary jurisdiction of petition by receiver to restrain maintenance of gates across highway, thereby destroying railroad's property, irrespective of citizenship.

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111 U. S. 542-548, 28 L. 512, SPINDLE v. SHREVE.

Syl. 1 (X, 834). Assignment for creditors.

Approved in In re Jersey Island Packing Co., 138 Fed. 627, 2 L. R. A. (N. S.) 560, where corporation executed trust deeds to secure debts not due, interest remaining in grantor passed to bankruptcy trustee.

111 U. S. 556-565, 28 L. 517, CARROLL CO. v. SMITH.

Syl. 1 (X, 835). Recitals in railroad aid bonds.

Approved in Green Co. v. Shortell, 116 Ky. 126, 75 S. W. 254, where county aid bonds contained no recitals as to performance of preliminaries requisite to issuance, county not estopped to plead noncompliance with conditions.

Syl. 3 (X, 835). Following state decisions.

Approved in Great Southern etc. Hotel Co. v. Jones, 193 U. S. 544, 48 L. 785, 24 Sup. Ct. 576, upholding Ohio statutes relating to mechanics' liens; Board of Commrs. v. Tollman, 145 Fed. 763, where at time county bonds issued there was no state construction of constitutional provision violated by statute under which bonds issued, holder of coupons entitled to federal court's independent construction, irrespective of subsequent state decision; Davis v. Commonwealth Land etc. Co., 141 Fed. 717, refusing to follow state decision rendered pending several suits involving boundaries where some of them had been decided by federal court; dissenting opinion in United States Savings & L. Co. v. Convent of St. Rose, 133 Fed. 360, majority holding where borrowing stockholder for eight years made monthly payments in accordance with contract, court will not make different rule for application of payments because stockholder believed different application should be made.

Syl. 4 (X, 836). Elections—Majority of voters.

Approved in Cronly v. Tucson, 6 Ariz. 239, 56 Pac. 877, applying rule under Act Cong. March 4, 1898, authorizing municipalities to issue bonds; dissenting opinion in Rice v. Palmer, 78 Ark. 450, 453, 96 S. W. 401, 403, majority holding under Kirby's Dig., § 718, majority of electors voting at election and not on proposition required to pass constitutional amendment.

Distinguished in Knight v. Shelton, 134 Fed. 427, 431, 433, under Arkansas constitution, approval of amendment by majority of electors voting at election is necessary and not on proposition.

111 U. S. 566-584, 28 L. 520, COLT v. COLT.

Syl. 1 (X, 837). Collateral attack on demurrer.

Approved in Vicksburg etc. R. R. Co. v. Tibbs, 112 La. 58, 36 So. 225, where by consent appeal taken by administrator was dismissed, fact that administrator was discharged before dismissal is no ground for collateral attack on dismissal.

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111 U. S. 584-597; 28 L. 527, MOBILE ETC. R. R. CO. v. JUREY.

Syl. 1 (X, 837). Parol to vary bill of lading.

Approved in Lillard v. Kentucky Distilleries etc. Co., 134 Fed. 183, 67 C. C. A. 74, as to admissibility of evidence of custom to explain written contract.

Syl. 2 (X, 837). Parol transportation contract.

Approved in Missouri etc. Ry. Co. v. Patrick, 144 Fed. 633, where on delivery of goods to railroad plaintiff obtained unsigned bill of lading, paper was evidence of contract actually made in absence of contrary evidence.

Syl. 5 (X, 838). Subrogation of insurer paying loss.

Approved in H. C. Judd & Root v. New York etc. Co., 130 Fed. 992, in action by insurer who has paid loss against third party, its own declarations are inadmissible against right of insured; Cunningham v. Seaboard Air Line Ry. Co., 139 N. C. 436, 51 S. E. 1031, 2 L. R. A. (N. S.) 921, where insurer in fire policy pays loss, insurer can and insured cannot sue one responsible for loss.

Distinguished in The Livingstone, 130 Fed. 750, 65 C. C. A. 610, neither abandonment to insurer of vessel sunk in collision nor bill of sale conveying same vests right of action against vessel in fault.

Syl. 6 (X, 838). Measure of damages—Goods lost in transit.

Approved in Chesapeake etc. Ry. Co. v. Stock, 104 Va. 104, 51 S. E. 163, following rule.

Syl. 7 (X, 839). General exception—Charge partly good.

Approved in Ball v. United States, 147 Fed. 43, applying rule in criminal case.

111 U. S. 597-604, 28 L. 534, GIBBS ETC. MFG. CO. v. BRUCKER.

Syl. 2 (X, 839). Contract made on Sunday valid.

Approved in Rodman v. Robinson, 134 N. C. 513, 101 Am. St. Rep. 877, 47 S. E. 22, 65 L. R. A. 682, under Code, § 3782, contract entered into on Sunday for conveyance of land is not void.

111 U. S. 604-608, 28 L. 532, PHILLIPS v. DETROIT.

Syl. 1 (X, 839). Patentable novelty—Judicial notice.

Approved in Baker v. Duncombe Mfg. Co., 146 Fed. 746, holding void Baker patents Nos. 726,812 and 736,346, for process of treating coffee.

111 U. S. 609-612, 28 L. 540, CARVER v. UNITED STATES.

Syl. 1 (X, 840). Recovery back of fine paid.

Approved in Houtz v. Board of Commrs., 11 Wyo. 182, 70 Pac. 847, where one brought before justice of peace was fined, and paid fine, payment not under duress, though justice had no jurisdiction save as examining magistrate.

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111 U. S. 612-624, 28 L. 536, CONNECTICUT MUT. LIFE INS. CO. v. LATHROP.

Syl. 2 (X, 841). Opinions of nonexpert witnesses.

Approved in Watts v. State, 99 Md. 37, 57 Atl. 545, following rule.

Syl. 3 (X, 841). Insanity—Opinion of nonexperts.

Approved in Grimshaw v. Kent, 67 Kan. 466, 73 Pac. 93, applying rule in suit where mental capacity of one to enter into contract in issue; State v. Lyons, 113 La. 979, 37 So. 897, in murder prosecution where defense is insanity, opinions of nonexpert to prove sanity are inadmissible in rebuttal; Pattee v. Whitcomb, 72 N. H. 251, 56 Atl. 461, on issue as to whether testator was unduly influenced by wife to execute will, evidence of his susceptibility to her influence was competent.

111 U. S. 624-640, 28 L. 542, ROBB v. CONNOLLY.

Syl. 1 (X, 842). Extradition agent as officer.

Cited in Ex parte Riggins, 134 Fed. 412, arguendo. See 112 Am. St. Rep. 142, note.

Syl. 2 (X, 842). Courts must protect federal rights.

Approved in New Jersey v. Corrigan, 139 Fed. 765, remanding indictment found by grand jury sworn prior to offense.

Syl. 4 (X, 843). Jurisdiction to determine legality of restraint.

Approved in In re Kopel, 148 Fed. 506, federal court may entertain petition for habeas corpus though state court has denied writ.

111 U. S. 640-675, 28 L. 547, JOHNSON v. WATERS.

Syl. 3 (X, 842). Equitable relief against fraudulent judgment.

Approved in McDaniel v. Traylor, 196 U. S. 420, 49 L. 536, 25 Sup. Ct. 369, upholding circuit court's jurisdiction of suit to set aside probate court's judgment against intestate's estate which is lien on property; Froebrich v. Lane, 45 Or. 21, 106 Am. St. Rep. 634, 76 Pac. 353, equity court may set aside county court's decree settling administrator's final account, procured by fraud; Brock v. Kirkpatrick, 72 S. C. 501, 52 S. E. 596, judgment on note against administrator acknowledged on final account and enrolled in probate court, and execution issued thereon, is prima facie evidence in suit by creditor to subject lands of devisees to payment without production of note. See 106 Am. St. Rep. 642, note.

111 U. S. 676-684, 28 L. 565, HENNEQUIN v. CLEWS.

Syl. 1 (X, 845). Bankruptcy—Debts created by fraud.

See 98 Am. St. Rep. 597, note.

Distinguished in Tinker v. Colwell, 193 U. S. 488, 48 L. 761, 24 Sup. Ct. 505, judgment for damages for criminal conversation is excepted from operation of discharge by Bankr. Act, § 17, subd. 2.

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Syl. 3 (X, 846). Bankruptcy—Fiduciary debts.

Approved in Crawford v. Burke, 195 U. S. 189, 49 L. 152, 25 Sup. Ct. 9, claim arising out of conversion by brokers of shares purchased and held by them on customer's account, is probable under Bankr. Act, § 63a; Barrett v. Prince, 143 Fed. 304, releasing on habeas corpus bankrupt held under capias in action to recover value of property embezzled where embezzlement not shown to have been committed while acting in fiduciary capacity; In re Harper, 133 Fed. 974, under Bankr. Act, 1898, § 17, cl. 4, officers of private corporations are not discharged from debts created by fraud; Reeves v. McCracken, 69 N. J. Eq. 206, 60 Atl. 333, debt arising out of implied understanding had on conveyance by deed absolute, no trust being expressly declared, not excepted from operation of bankruptcy discharge; Crosby v. Miller, 25 R. I. 173, 175, 55 Atl. 328, 329, discharge in bankruptcy cancels judgment on debt incurred by broker by failure to return to customer securities deposited with him as collateral against loss.

111 U. S. 684-700, 28 L. 559, WILLIAMS v. MORGAN.

Syl. 1 (X, 846). Receivers—Order fixing compensation appealable.

Approved in Ruggles v. Patton, 143 Fed. 314, 315, order authorizing receiver to pay himself from funds in his hands specific sum for past services is appealable; Dodge v. Norlin, 133 Fed. 365, 66 C. C. A. 425, judgment of bankruptcy court that chattel mortgage on bankrupt's property is voidable by trustee is final appealable decree.

Distinguished in Heinze v. Butte etc. Min. Co., 129 Fed. 338, 64 C. C. A. 15, neither order of circuit court approving receiver's monthly reports, nor one directing payment of his expenses, made prior to final account, is appealable.

111 U. S. 701-715, 28 L. 569, HAGAR v. RECLAMATION DIST.

Syl. 2 (X, 848). Reclamation—Lands benefited.

Approved in Van Cleve v. Passaic Valley Sewerage Commrs., 71 N. J. L. 227, 58 Atl. 588, upholding P. L. 1903, p. 777, to relieve from pollution streams within Passaic Valley sewerage district.

Syl. 3 (X, 848). Liens—Expense of reclaiming swamps.

See 102 Am. St. Rep. 832, note.

Syl. 4 (X, 848). Burden of cost of local improvement.

Approved in Voris v. Pittsburg Plate Glass Co., 163 Ind. 608, 70 N. E. 252, Burns' Rev. St. 1894, § 4290, is not void as not giving owner of back-lying land within one hundred and fifty feet of street improvement chance to be heard on question of special benefits; Sisson v. Board of Supervisors, 128 Iowa, 458, 104 N. W. 461, upholding Acts 30th Gen. Assem., p. 61, c. 68, for establishment of drainage districts; Van Cleve v. Passaic Valley Sewerage Commrs., 70 N. J. L. 214, 215, 58 Atl. 583, upholding P. L. 1903, p. 777, to relieve from pollution streams within Passaic Valley sewerage district. See 102 Am. St. Rep. 814, note.

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Syl. 7 (X, 849). Due process of law.

Approved in In re Finley, 1 Cal. App. 201, 81 Pac. 1046, upholding Penal Code, § 246, providing death penalty for assaults with deadly weapon by life convicts; Ross v. Board of Supervisors, 128 Iowa, 441, 104 N. W. 511, upholding Code, tit. 10, c. 2, relative to proceedings for establishment of drainage ditches though scope of appeal limited; Hoertz v. Jefferson etc. Draining Co., 119 Ky. 833, 84 S. W. 1143, upholding levy of drainage assessment after notice by publication; St. Louis v. Galt, 179 Mo. 17, 77 S. W. 879, 63 L. R. A. 778, upholding conviction of anti-weed ordinance in ordinary courts with right of appeal; dissenting opinion in United States v. Ju Toy, 198 U. S. 273, 49 L. 1048, 25 Sup. Ct. 644, majority upholding 28 Stat. 372, 390, c. 301, making departmental decision on right of Chinese to enter conclusive on federal courts in habeas corpus; Gray v. Stiles, 6 Okl. 546, 49 Pac. 1104, arguendo.

Syl. 8 (X, 850). State taxing power, how exercised.

Approved in Hodge v. Muscatine County, 121 Iowa, 489, 104 Am. St. Rep. 304, 96 N. W. 971, 67 L. R. A. 624, upholding Code, § 5007, taxing vendor of cigarettes and buildings used in their manufacture or sale.

Syl. 9 (X, 850). Notice of tax levy, when unnecessary.

Approved in Hodge v. Muscatine Co., 196 U. S. 280, 49 L. 481, 25 Sup. Ct. 237, under Iowa Code, § 5007, taxing business of selling cigarettes, notice of assessment or levy of tax imposed thereby, not necessary; Michigan R. R. Tax Cases, 138 Fed. 237, upholding Pub. Acts 1901, p. 236, Act No. 173, relating to assessment and taxation of railroad property; People v. Reardon, 184 N. Y. 447, 112 Am. St. Rep. 637, 77 N. E. 975, upholding Laws 1905, pp. 474, 477, §§ 315, 324, imposing tax on stock transfers. See 104 Am. St. Rep. 314, note.

Syl. 10 (X, 850). Due process—Notice of assessment.

Approved in Taylor v. Crawford, 72 Ohio St. 57, 74 N. E. 1068, 69 L. R. A. 805, upholding 95 Ohio Laws, p. 155, § 3, providing for cleaning and repairing public drains at expense of property owners; Nathan v. Spokane Co., 35 Wash. 34, 35, 76 Pac. 523, 65 L. R. A. 336, upholding Bal. Code, § 1740a, relating to assessment of taxes on goods brought into county after March 1st, in any year to be sold without intention of engaging in permanent trade.

Syl. 11 (X, 851). Due process—Contest of tax.

Approved in Georgia etc. R. R. Co. v. Wright, 124 Ga. 618, 53 S. E. 261, upholding Georgia scheme of taxation; Carney v. People, 210 Ill. 440, 71 N. E. 367, where, after personalty belonging to C, was assessed to him individually, board assessed other property to firm of C. & Co., under which name he did business, latter assessment not raising of assessment requiring notice under Rev. St., 1899, p. 1444, c. 120; McMillanet v. Board of Co. Commrs., 93 Minn. 21, 100 N. W. 385, upholding Laws 1901, p. 413, c. 258, as amended in 1902, relating to ditch construction;

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Chicago etc. R. Co. v. State, 128 Wis. 654, 108 N. W. 585, upholding Laws 1903, p. 491, c. 315, relating to determination of average rate of taxation on general property in assessing railroads.

(X, 848.) Miscellaneous. Cited in State v. Bryan, 50 Fla. 373, 39 So. 955, arguendo.

111 U. S. 716-722, 28 L. 574, LOUISIANA v. POLICE JURY.

Syl. 1 (X, 852). Obligation of contract defined.

Approved in Ex parte Folsom, 131 Fed. 503, holding void South Carolina constitutional amendment dissolving corporate existence of certain townships which had issued railroad aid bonds under existing statute.

Syl. 2 (X, 852). Modification of taxing power—Obligation of contracts.

Approved in City of Ft. Madison v. Ft. Madison Water Co., 134 Fed. 216, 67 C. C. A. 142, Iowa statute providing for assessment of property at quarter of cash value is void as affecting ability of city to pay hydrant rentals under contract made when statute required assessment at true cash value.

111 U. S. 722-733, 28 L. 577, HITZ v. NATIONAL METROPOLITAN BANK.

Syl. 6 (X, 853). Abolition of curtesy—Vested rights.

See 112 Am. St. Rep. 595, note.

Syl. 7 (X, 853). Curtesy exempt from husband's debts.

See 112 Am. St. Rep. 595, note.

111 U. S. 738-745, 28 L. 582, FACTORS' ETC. INS. CO. v. MURPHY.

Syl. 2 (X, 854). Merger—Mortgagee acquiring legal title.

Approved in McCreary v. Coggeshall, 74 S. C. 50, 53 S. E. 980, where testator devised property to A and on his death with issue to such issue and if without issue to B, on B acquiring life estate, contingent remainder merged in B's fee; Glenn v. Rudd, 68 S. C. 105, 102 Am. St. Rep. 659, 46 S. E. 556, parol agreement or conveyance to mortgagee that conveyance shall not constitute merger and satisfaction of mortgage.

111 U. S. 746-766, 28 L. 585, BUTCHERS' UNION CO. v. CRESCENT CITY CO.

Syl. 1 (X, 855). Police powers—Inspection of hides.

Approved in Squire v. Tellier, 185 Mass. 21, 102 Am. St. Rep. 322, 69 N. E. 313, upholding act of 1903, regulating sales of stocks of merchandise in bulk.

Syl. 2 (X, 856). Police power cannot be contracted away.

Approved in Manigault v. Springs, 199 U. S. 481, 50 L. 279, 26 Sup. Ct. 127, upholding construction of dam across navigable stream to drain

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lowlands; New Orleans Gaslight Co. v. Drainage Commission, 197 U. S. 460, 49 L. 835, 25 Sup. Ct. 471, upholding right to impose on gas company cost of change in location of pipes in streets, because of construction of city drainage system; Fort Smith v. Hunt, 72 Ark. 565, 102 Am. St. Rep. 51, 82 S. W. 166, 66 L. R. A. 238, contract between city and electric company prescribing terms on which latter may erect poles in streets does not deprive city of power to exact pole license; Van Cleve v. Passaic Valley etc. Commrs., 71 N. J. L. 224, 58 Atl. 587, acts under which city of Paterson authorized to empty sewage into Passaic river were mere license revocable whenever public health require; White v. Holman, 44 Or. 186, 74 Pac. 935, Laws 1903, p. 238, creating commission for licensing sailors' boarding-houses and giving board right to reject applications, does not authorize grant of license to one man only; Scranton Gas etc. Co. v. Scranton City, 214 Pa. St. 590, 64 Atl. 85, gas company compelled to move pipes from street because of change of grade cannot recover damages from city; Norfolk etc. R. R. Co. v. Commonwealth, 103 Va. 293, 49 S. E. 40, under Const., § 156b, corporation commission may regulate charges of switching company for placing cars on scales; Petersburg v. Petersburg Aqueduct Co., 102 Va. 659, 47 S. E. 849, under Code 1887, § 1093, city may prohibit water company from digging up streets in extending beyond limits of town, as it existed when company chartered; Board of Education v. Phillips, 67 Kan. 553, 73 Pac. 98, arguendo.

Distinguished in O'Reilly De Camara v. Brooke, 135 Fed. 389, holding Cuban military governor liable for abolishing exclusive franchise to slaughter cattle in Havana granted by Spanish government.

Syl. 3 (X, 857). Inalienable right to follow occupation.

Approved in Humes v. City of Little Rock, 138 Fed. 932, holding void ordinance imposing tax of $50 weekly on business of selling trading stamps; Toney v. State, 141 Ala. 123, 109 Am. St. Rep. 23, 37 So. 334, 67 L. R. A. 286, holding void act of 1901, making it penal to break contract to labor or lease land; State v. Feingold, 77 Conn. 331, 59 Atl. 213, upholding Pub. Acts 1897, p. 855, c. 152, prohibiting sales by itinerant vendors without license, and defining itinerant vendors; Schnaier v. Navarre Hotel etc. Co., 182 N. Y. 89, 108 Am. St. Rep. 790, 70 L. R. A. 722, 74 N. E. 562, holding void Laws 1896, p. 1052, making it unlawful for firm to engage in business of master plumber unless each member has been registered after examination; Block v. Schwartz, 27 Utah, 400, 76 Pac. 26, holding void Act 1901, p. 67, regulating sales of stocks of merchandise in bulk; State v. Smith, 42 Wash. 247, 84 Pac. 854, holding void Laws 1905, p. 130, providing for licensing of plumbers; dissenting opinion in Ex parte Boyce, 27 Nev. 367, 75 Pac. 17, 65 L. R. A. 47, majority upholding act of 1903, providing for eight-hour day for workmen in mines, smelters and ore-mills.

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111 U. S. 766-768, 28 L. 592, EX PARTE HITZ.

Syl. 2 (X, 858). Certiorari by defendant not of right,

Approved in Whitney v. Dick, 202 U. S. 139, 50 L. 966, 26 Sup. Ct. 584, denying certiorari to review conviction in federal court where only question is whether punishment of offense is within federal jurisdiction.

111 U. S. 768-769, 28 L. 593, SAN FRANCISCO v. SCOTT.

Syl. 1 (X, 858). Federal question—Validity of pueblo grant.

Approved in Devine v. Los Angeles, 202 U. S. 337, 50 L. 1055, 26 Sup. Ct. 652, nature and extent of riparian rights and rights in percolating waters of patentees whose titles derived from Mexican grants to predecessors are not federal questions.

111 U. S. 776, 28 L. 599, NICKLE v. STEWART.

Syl. 1 (X, 859). Bill of review—New matter.

Distinguished in Safe Deposit etc. Co. v. Gittings, 102 Md. 463, 62 Atl. 1033, 4 L. R. A. (N. S.) 865, where trial court entered decree conformable to appellate court's opinion, reversing dismissal of bill for accounting, bill of review allowable for newly discovered evidence.

111 U. S. 776-783, 28 L. 596, BURNHAM v. BOWEN.

Syl. 1 (X, 859). Receivers—Railroad's operating expenses.

Approved in Le Hote v. Boyet, 85 Miss. 642, 38 So. 1, claims for labor necessary to continuing business performed for corporation just prior to receivership are preferred over mortgage creditors.

Syl. 2 (X, 860). Railroad receivership—Diversion of income.

Approved in Gregg v. Metropolitan Trust Co., 197 U. S. 188, 49 L. 719, 25 Sup. Ct. 415, claim for ties necessary to preservation of railroad furnished within six months of receivership is not preferred over lien of mortgage recorded prior to the contract.

Syl. 3 (X, 862). Assignment of claim—Railroad receivership.

Approved in Kirkpatrick v. Eastern Milling etc. Co., 135 Fed. 149, where one made underwriting agreement with corporation to purchase its bonds and receive stock as bonus, but bonds pledged to bank with assignment of agreement, bank entitled to stock from receivers of corporation after its insolvency.

Syl. 4 (X, 862). Railroad mortgage—Diversion of earnings.

Approved in Messick v. Hartford etc. R. R. Co., 76 Conn. 19, 20, 21, 100 Am. St. Rep. 977, 55 Atl. 667, 668, persons furnishing railroad supplies necessary to operation of road and money to pay wages after default in interest on bonds are not preferred to bondholders on sale of mortgaged property, there having been no diversion of income; Security Trust Co. v. Goble R. Co., 44 Or. 374, 74 Pac. 921, where services to railroad rendered thirty days prior to receivership were not rendered in

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furtherance of railroad business but in company's logging venture, claimants not preferred to mortgage.

Distinguished in Norman & Co. v. Edington, Groner & Griffiths, 115 Tenn. 314, 89 S. W. 745, under Shannon's Code, § 3580, creating laborer's lien for railroad construction, notice required cannot be given by assignee of laborer's claim.

111 U. S. 784-788, 28 L. 603, WHITE v. KNOX.

Syl. 3 (X, 864). Judgment against insolvent bank—Interest.

Approved in In re Kallak, 147 Fed. 278, taxes due from bankrupt are payable together with penalties or interest accrued under state laws to time of payment.

CXII UNITED STATES.

112 U. S. 1-7, 28 L. 613, UNITED STATES v. MORTON.

Syl. 1 (X, 867). West Point cadet in service.

Distinguished in Hartigan v. United States, 196 U. S. 174, 49 L. 436, 25 Sup. Ct. 204, upholding dismissal of West Point cadet without trial and conviction by court-martial.

112 U. S. 8-12, 28 L. 615, WOODWORTH v. BLAIR.

Syl. 2 (X, 867). Prior mortgagee an unnecessary party.

Approved in Boatmen's Bank v. Fritzlen, 135 Fed. 660, 68 C. C. A. 288, holding where bill seeks both to foreclose and set aside mortgage, senior mortgagee a necessary party, and can remove cause.

112 U. S. 24-32, 28 L. 623, MOFFAT v. UNITED STATES.

Syl. 3 (X, 868). Fictitious land patents void.

Approved in Hyde v. Shine, 199 U. S. 80, 50 L. 96, 25 Sup. Ct. 760. holding scheme to exchange state school lands obtained in name of fictitious persons by forged instruments for public lands a conspiracy against United States.

Distinguished in United States v. Hyde, 132 Fed. 547, holding title passed where fictitious applications accompanied by assignments.

112 U. S. 36-41, 28 L. 627, DAVIES v. CORBIN.

Syl. 2 (X, 870). Jurisdiction fixed by whole tax.

Approved in Stanwood v. Wishard, 134 Fed. 961, permitting defendants to join in creditor's suit, although respective claims less than $2,000.

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112 U. S. 50-69, 28 L. 656, BUTTERWORTH v. UNITED STATES.

Syl. 1 (X, 870). Mandamusing subordinate public officers.

Approved in Wadsworth v. Boysen, 148 Fed. 780, enjoining Indian agent acting unlawfully from obstructing prospector working on reservation lands; McDaid v. Territory, 1 Okl. 106, 30 Pac. 442, compelling townsite trustees to issue deed to contestant where secretary directs unauthorized appeal; State v. Williams, 45 Or. 333, 77 Pac. 971, 67 L. R. A. 166, mandamusing chief of police where scheme of mayor licensing gambling illegal.

Syl. 4 (X, 871). Patents issued by commissioner.

Approved in Vant Wond Rubber Co. v. Sternan, 145 Fed. 198, holding bill for infringement alleging application made "to proper department" insufficient to show patent issued by proper officers; McDaid v. Territory, 1 Okl. 98, 30 Pac. 440, compelling site trustees to issue deed to contestant entitled thereto, in spite of unauthorized appeal. See note 98 Am. St. Rep. 873.

Syl. 7 (X, 872). Patents—Remedy of unsuccessful applicant.

Approved in Appert v. Brownsville etc. Co., 144 Fed. 117, holding suit by unsuccesful applicant one of original equity jurisdiction.

112 U. S. 69-75, 28 L. 653, MORAN v. NEW ORLEANS.

Syl. 1 (X, 872). State tax on interstate commerce.

Approved in Commonwealth v. Ayer & Co., 117 Ky. 169, 77 S. W. 688, holding interstate vessels registered at Paducah, Kentucky, having same painted on stern, taxable at Paducah.

112 U. S. 76-83, 28 L. 673, UNITED STATES v. WADDELL.

Syl. 2 (X, 873). Homestead right protected by constitution—Conspiracy.

Approved in Ex parte Riggins, 134 Fed. 421, refusing to release petitioner where indictment charged lynching of negro a conspiracy to deprive him of rights as citizen.

Distinguished in United States v. Moore, 129 Fed. 634, denying jurisdiction to punish conspiracy against citizen organizing miners' union.

Syl. 3 (X, 873). Acts constituting conspiracy clearly alleged.

Approved in Ex parte Riggins, 134 Fed. 412, applying rule to lynching of negro.

112 U. S. 83-88, 28 L. 617, WILSON v. ARRICK.

Syl. 1 (X, 874). Powers of administrator de bonis non.

Approved in McCreery v. Bank, 55 W. Va. 670, 47 S. E. 893, denying recovery of bank certificates pledged by executor as collateral security. See 108 Am. St. Rep. 421, 429, note.

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112 U. S. 94-123, 28 L. 643, ELK v. WILKINS.

Syl. 1 (X, 875). Indian not a citizen.

Distinguished in In re Minook, 2 Alaska, 212, holding under Indian severalty bill, an Indian voluntarily separating from tribe and adopting civilization a citizen by naturalization; Keokuk v. Ulam, 4 Okl. 15, 38 Pac. 1084, subjecting personal property of Indian separating from reservation to taxation.

112 U. S. 129-138, 28 L. 685, NIX v. ALLEN.

Syl. 1 (X, 877). Pre-empting portion, abandons remainder of claim.

Distinguished in Miller v. Hamley, 31 Colo. 499, 74 Pac. 981, holding locator obtaining patent for portion of lode claim, retaining possession of remainder, did not lose rights thereto.

112 U. S. 144-149, 28 L. 670, HORBACH v. HILL.

Syl. 3 (X, 878). Fraudulent conveyances unaffecting subsequent creditors.

Approved in In re Callison, 130 Fed. 988, sustaining demurrer, petition failing to show creditor such at time conveyance made; Brake v. Callison, 129 Fed. 202, 63 C. C. A. 359, denying conveyance to all existing creditors an act of bankruptcy.

112 U. S. 150-165, 28 L. 636, FORT SCOTT v. HICKMAN.

Syl. 2 (X, 878). Acknowledgment of debt certain.

Approved in Park v. Park, 32 Ind. App. 644, 70 N. E. 493, holding conclusion of law unsustained, written acknowledgment that note "was due and unpaid" omitted from finding; Ryan v. Canton Bank, 103 Md. 447, 63 Atl. 1066, denying statement in corporation minutes extended time to bring action for further compensation. See notes 102 Am. St. Rep. 756, 757.

Syl. 4 (X, 879). Erroneous judgment on special finding reversed.

Approved in Anglo-American etc. Co. v. Lombard, 132 Fed. 734, 735, 68 C. C. A. 89, reversing judgment where action tried by stipulation and finding covers part of issues; Rew v. Independent School Dist., 125 Iowa, 39, 106 Am. St. Rep. 282, 98 N. W. 806, directing lower court to enter judgment without retrial of case.

112 U. S. 165-177, 28 L. 680, BUENA VISTA COUNTY v. IOWA FALLS ETC. CO.

Syl. 2 (X, 879). Land commissioner's decision appealable.

Approved in dissenting opinion in McDaid v. Territory, 1 Okl. 110, 30 Pac. 444, majority denying appeal after issue of patent from townsite trustees' award to contestant.

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112 U. S. 178-180, 28 L. 690, EX PARTE CROUCH.

Syl. 1 (X, 880). Habeas corpus where evidence conflicts.

Approved in United States v. Lewis, 200 U. S. 8, 50 L. 346, 26 Sup. Ct. 229, denying relief to soldiers charged with murder where evidence conflicts on question of surrender before shot fired; United States v. Lewis, 129 Fed. 827, refusing to inquire whether shooting was justifiable.

112 U. S. 183-187, 28 L. 692, SCOTLAND COUNTY v. HILL.

Syl. 1 (X, 881). State decrees bind all parties.

Approved in Georgia R. R. Co. v. Wright, 124 Ga. 603, 53 S. E. 254, estopping nominal defendant from setting up matters against codefendant in state court pleadable in federal court. See note, 105 Am. St. Rep. 215.

Distinguished in Mankato v. Barber etc. Pav. Co., 142 Fed. 341, holding litigant not concluded by judgment of state court rendered after judgment procured in federal court.

Syl. 2 (X, 881). Offer of proof presumed bona fide.

Approved in State v. Irwin, 17 S. D. 389, 97 N. W. 10, holding court erred rejecting offer to prove former acquittal.

112 U. S. 187-193, 28 L. 693, AYRES v. WISWALL.

Syl. 4 (X, 883). Separate causes ground of removal.

Approved in Manufacturers Com. Co. v. Brown Alaska Co., 148 Fed. 310, allowing removal of maker of note, although indorser and holder citizens of same state; Miller v. Clifford, 133 Fed. 884, 67 C. C. A. 52, denying single stockholder right to remove, where action brought by creditor against stockholders upon statutory liability; Matz v. Arick, 76 Conn. 393, 56 Atl. 632, vacating judgment as to all, where appeal taken by some defendants.

112 U. S. 201-206, 28 L. 629, FOSTER v. KANSAS.

Syl. 3 (X, 884). Supersedeas effective from time filed.

Approved in Thalheim v. Camp Phosphate Co., 48 Fla. 195, 37 So. 525, holding supersedeas does not restore personal property or impair lien created by execution.

Syl. 4 (X, 885). State may regulate liquor traffic.

Approved in State v. Frederickson, 101 Me. 46, 63 Atl. 539, sustaining conviction for maintaining liquor nuisance; Harrell v. Speed, 113 Tenn. 230, 106 Am. St. Rep. 814, 81 S. W. 841, upholding tax on liquor sold while interstate vessel moored at landing place; Webster v. State, 110 Tenn. 505, 82 S. W. 182, sustaining act prohibiting sale of liquors within four miles of schoolhouses.

Syl. 6 (X, 886). Removal of officers—Due process.

Distinguished in dissenting opinion in Territory v. Albright, 12 N. M. 316, 78 Pac. 211, majority determining right of assessor to office where he was appointed prior to taking effect of act dividing county.

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112 U. S. 216-217, 28 L. 697, SNYDER v. UNITED STATES.

Syl. 2 (X, 886). Verdict unaffected by bad spelling.

Approved in Wilson v. Territory, 7 Ariz. 50, 60 Pac. 697, upholding verdict of murder in second "decree"; Johns v. State, 46 Fla. 154, 35 So. 71, refusing to set aside verdict, pronoun we spelled "wee."

112 U. S. 217-227, 28 L. 698, LABETTE CO. COMMRS. v. UNITED STATES.

Syl. 3 (X, 887). Mandamus joins all necessary parties.

Approved in Rose v. McKie, 145 Fed. 590, overruling objection to writ on ground statutory duty falls short of full satisfaction; McKie v. Rose, 140 Fed. 149, joining all officers necessary to levy tax to pay judgment; Guthrie v. Sparks, 131 Fed. 451, 65 C. C. A. 427, joining sheriff although no duty devolved on him until after levy made; State v. Williams, 45 Or. 331, 77 Pac. 970, 67 L. R. A. 166, holding mandamus properly directed to several officers commanding each to do the successive act enjoined by law.

112 U. S. 244-249, 28 L. 702, MORRIS v. McMILLAN.

Syl. 1 (X, 889). Invention distinguished from mechanical skill.

Approved in Conderman v. Clements, 147 Fed. 916, holding Conderman wheel patent different from Ferris wheel only in detachable parts void; McKenzie Furn. Co. v. Green Eng. Co., 138 Fed. 832, declaring Green & Gent patent for improvement in fire arches void in view of prior art.

112 U. S. 250-261, 26 L. 708, CONNECTICUT MUT. L. INS. CO. v. UNION ETC. CO.

Syl. 1 (X, 889). State laws binding on federal courts.

Approved in Easton v. Geo. Wostenholm & Son, 137 Fed. 530, 70 C. C. A. 108, presuming English law governing contract for goods purchased abroad same as local law; Toledo Tract. Co. v. Cameron, 137 Fed. 66, 69 C. C. A. 28, receiving former testimony, admissible by state law where witness without district and one hundred miles from trial.

Distinguished in Doll v. Equitable etc. Soc., 138 Fed. 710, allowing physician to testify under disqualifying statute of foreign state, where contract sued on was executed.

Syl. 3 (X, 890). Insurance—Answers omitting minor ailments.

Approved in Mutual etc. Ins. Co. v. Dobler, 137 Fed. 556, 70 C. C. A. 134, holding occasional examinations without charge, not vitiating answer, "he did not remember when he had consulted physician"; Blumenthal v. Berkshire Life Ins. Co., 134 Mich. 218, 104 Am. St. Rep. 604, 96 N. W. 18, holding insured answering as to consultation need only state consultations as to serious ailments; Rupert v. Supreme Court U. O. F., 94 Minn. 296, 298, 102 N. W. 717, presuming trivial ailments and injuries not in contemplation of parties.

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112 U. S. 261-273, 28 L. 704, GRENADA COUNTY v. BROGDEN.

Syl. 1 (X, 891). Statutes harmonized with constitution.

Approved in Burke v. Malaby, 14 Okl. 655, 78 Pac. 107, declaring act permitting action to be brought in county where subject of action situated void—federal constitution prescribed different rule; dissenting opinion in Hartford Fire Ins. Co. v. State, 76 Ark. 325, 89 S. W. 51, majority sustaining act prohibiting foreign corporations from doing business within state upon failure to file affidavit.

Syl. 2 (X, 891). Unauthorized acts may be ratified.

Approved in Red River etc. Co. v. Tennessee etc. R. R. Co., 113 Tenn. 731, 87 S. W. 1024, legalizing subscription as though authority originally given.

112 U. S. 294-306, 28 L. 729, HEIDRITTER v. OIL-CLOTH CO.

Syl. 1 (X, 892). Liens—Service may be constructive.

Approved in Genest v. Las Vegas Masonic Bldg. Assn., 11 N. M. 265, 67 Pac. 746, sustaining service by publication in an adjudication of lien.

Syl. 2 (X, 893). Court obtaining possession acquires jurisdiction.

Distinguished in Fountain v. 624 Pieces of Timber, 140 Fed. 381, sustaining subsequent seizure by marshal where deputy sheriff failed to take property into possession; Ingraham v. National Salt Co., 139 Fed. 689, refusing to enjoin receivers of state court, where federal attachment levied before insolvency proceedings commenced was on real estate.

112 U. S. 306-311, 28 L. 746, EAST TENNESSEE ETC. R. R. CO. v. SOUTHERN TEL. CO.

Syl. 2 (X, 895). Remedy—Courts limited by statute.

Distinguished in Estate of Sutro, 143 Cal. 492, 77 Pac. 404, sustaining complaint to establish heirship filed twenty days after decree establishing proof of notice.

Syl. 3 (X, 895). Removal—Federal court's power limited.

Approved in Broadmoor Land Co. v. Curr, 142 Fed. 423, conforming procedure in condemnation proceedings to state practice; Broadmoor Land Co. v. Curr, 133 Fed. 38, 66 C. C. A. 143, modifying supersedeas in federal court to conform to state practice.

112 U. S. 331-343, 28 L. 717, HART v. PENNSYLVANIA R. R. CO.

Syl. 1 (X, 896). Reduced rates affect carrier's liability.

Approved in Missouri etc. Ry. Co. of Texas v. Patrick, 144 Fed. 634, enforcing limitation to agreed value per one hundred pounds in consideration of reduced price; Macfarlane v. Adams Exp. Co., 137 Fed. 983, 984, limiting liability to amount stated in receipt, charge based on corresponding value; United States Express Co. v. Joyce, 36 Ind. App. 4, 72 N. E. 867, holding carrier liable for injuries, although horses

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sold for sum exceeding declared value; Baltimore etc. R. R. Co. v. Hubbard, 72 Ohio St. 320, 74 N. E. 219, limiting liability to amount stated in contract based upon reduced rate; Hill v. Northern Pac. R. Co., 33 Wash. 701, 704, 705, 74 Pac. 1055, 1056, upholding limitation of liability in case of loss or damage; dissenting opinion in Holmes v. North German etc. Co., 184 N. Y. 287, 77 N. E. 23, majority holding carrier liable for handbag, although valuation not declared or additional charges paid. See note, 97 Am. St. Rep. 720.

Distinguished in United States etc. Mills v. Oceanic etc. Co., 145 Fed. 702, 703, 705, holding carrier's liability limited to specific sum per package, unless value expressed, invalid, although limitation to invoice value enforceable; Ficklin v. Wabash R. R. Co., 117 Mo. App. 226, 93 S. W. 848, holding liability not limited, where contract providing reduced rate same for all shipments; Keyes etc. Livery Co. v. St. Louis etc. R. R. Co., 113 Mo. App. 154, 87 S. W. 555, holding on evidence, reduced charge not a consideration for stipulation liquidating damages; Nashville etc. Ry. Co. v. Stone, 112 Tenn. 374, 79 S. W. 1037, refusing to limit liability to $5 per hog as unreasonable; Sprigg v. Rutland R. R. Co., 77 Vt. 353, 60 Atl. 145, holding carriers liable for injuries to caretaker, where contract for caretaker and stock entire; Chesapeake etc. Ry. Co. v. Beasley, 104 Va. 793, 794, 800, 804, 52 S. E. 567, 568, 570, 571, 3 L. R. A. (N. S.) 183, refusing to limit liability for baggage to $100 as unreasonable.

112 U. S. 344-353, 28 L. 760, BRANDIES v. COCHRANE.

Syl. 1 (X, 900). Judgment not a lien on trust.

Distinguished in Reed v. Munn, 148 Fed. 745, 746, holding equitable interest of beneficiaries subject to sale under execution.

112 U. S. 354-369, 28 L. 665, MAHN v. HARWOOD.

Syl. 2 (X, 900). Patent commissioner's decision attackable.

Approved in Weston etc. Co. v. Empire etc. Co., 136 Fed. 599, 69 C. C. A. 329, sustaining defense, where patent issued two years after application and forfeiture of prior one for nonpayment of fee.

Syl. 3 (X, 901). Reissue granted for inadvertency.

Approved in Milloy Elec. Co. v. Thompson etc. Elec. Co., 148 Fed. 846, denying reissue upon discovery of error after long litigation.

Syl. 5 (X, 902). Patent covers parts, specifically described.

Approved in Thomson etc. Co. v. Black R. Tr. Co., 135 Fed. 766, 68 C. C. A. 461, sustaining reissue, although changes in reissued patent immaterial and some of claims identical with original issue; Rembert etc. Co. v. American Cotton Co., 129 Fed. 369, 64 C. C. A. 25, declaring patent without utility when restricted to theory underlying successful operation.

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112 U. S. 377-396, 28 L. 787, CHICAGO ETC. RY. CO. v. ROSS.

Syl. 3 (X, 904). Conductor not fellow-servant of fireman.

Approved in McGill v. Southern Pac. Co., 4 Ariz. 122, 124, 33 Pac. 821, 822, holding section foreman not fellow-servant of conductor, preventing recovery; Evans v. Louisiana Lumber Co., 111 La. 539, 35 So. 738, holding company liable where laborer injured through negligence of sawyer; Merritt v. Victoria Lumber Co., 111 La. 164, 35 So. 499, holding company liable where foreman's negligence in not properly guarding saw resulted in laborer's death; Southern Ry. Co. v. Cheaves, 84 Miss. 587, 36 So. 697, holding company liable for injuries to fireman through negligence of engineer; Allen v. Bell, 32 Mont. 78, 79 Pac. 584, allowing recovery to miner for injury through false information given by foreman as to blast; Railroad v. Baldwin, 113 Tenn. 413, 82 S. W. 488, 67 L. R. A. 340, allowing recovery by brakeman injured by conductor signaling engineer; Mullin v. Northern Pac. Ry. Co., 38 Wash. 554, 80 Pac. 815, allowing recovery, employee in pit injured by another employee running engine over pit.

Disapproved in Northern Pac. Ry. Co. v. Dixon, 194 U. S. 344, 48 L. 1009, 24 Sup. Ct. 683, local telegraph operator and fireman fellow-servants; Baltimore etc. Ry. Co. v. Brown, 146 Fed. 28, holding gang boss a fellow-servant of crew; Smith v. Lehigh Valley R. Co., 141 Fed. 194, holding mate and floatman fellow-servants; Crosby v. Lehigh Val. R. Co., 137 Fed. 767, 70 C. C. A. 199, fireman on passenger engine fellow-servant of conductor on train approaching from opposite direction; The Westport, 136 Fed. 395, 69 C. C. A. 235, captain and seaman fellow-servants; Southern Pac. Co. v. McGill, 5 Ariz. 43, 44 Pac. 304, foreman section-hand and conductor are fellow-servants; Larsen v. Le Doux, 11 Idaho, 57, 81 Pac. 601, holding contractors not liable for carelessness of employee constructing scaffold; Atchison etc. Bridge Co. v. Miller, 71 Kan. 31, 80 Pac. 25, pile-driver a fellow-servant of machinist repairing hoisting engine; Grim v. Olympia Light etc. Co., 42 Wash. 123, 130, 84 Pac. 636, 638, holding motormen operating distinct cars under arrangement between themselves are fellow-servants.

112 U. S. 405-413, 28 L. 733, REYNOLDS v. CRAWFORDSVILLE BANK.

Syl. 2 (X, 910). Federal jurisdiction unaffected by state law.

Approved in Mathews S. Co. v. Mathews, 148 Fed. 493, remanding creditor's suit to apply property not reachable by execution in action at law; Ames etc. Co. v. Big Indian etc. Co., 146 Fed. 173, 175, entertaining jurisdiction to settle rights and priorities of all persons diverting water; United States Min. Co. v. Lawson, 134 Fed. 771, 67 C. C. A. 587, entertaining suit to quiet title without prior adjudication of title at law or reference to possession.

Syl. 3 (X, 911). Pleadings to quiet title.

Approved in Atlantic Trust Co. v. Chapman, 145 Fed. 821, holding complainant entitled to denials in petition and matters of defense prop-

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erly pleaded in answer; Robinson v. American Car etc. Co., 132 Fed. 166, holding cause submitted on pleadings, facts alleged in bill and not negatived by answer, only considered true; Seymour Water Co. v. Seymour, 163 Ind. 128, 70 N. E. 517, holding complaint alleging franchise for waterworks unreasonable and seeking revocation of contract executed thereunder insufficient to support action to quiet title.

Syl. 6 (X, 913). Unauthorized conveyance to corporation not void.

Approved in State v. American Book Co., 69 Kan. 13, 76 Pac. 415, 1 L. R. A. (N. S.) 1041, refusing to enjoin foreign corporation from performing contracts made before license obtained.

112 U. S. 414-423, 28 L. 794, KANSAS PAC. R. R. v. ATCHISON R. R.

Syl. 2 (X, 913). Corporations citizens of creating states.

Approved in United States v. Milwaukee etc. Co., 142 Fed. 255, treating, in action under Elkins act, corporation organized and owned by officers of another, identical with such other corporation.

Syl. 3 (X, 913). Reserved indemnity lands unselectable.

Approved by Sjoli v. Dreschel, 199 U. S. 566, 50 L. 312, note, 26 Sup. Ct. 154, holding grantee did not acquire title to land granted within indemnity limits by merely filing selections; Humbird v. Avery, 195 U. S. 508, 49 L. 299, 25 Sup. Ct. 123, holding title to indemnity lands not vested, until selection made and approved; Sage v. Maxwell, 91 Minn. 533, 99 N. W. 45, sustaining homestead rights to lands within indemnity limits.

Distinguished in United States v. Choctaw etc. R. R. Co., 3 Okl. 498, 41 Pac. 760, refusing to restrain railroad from building road without approval of Secretary of Interior.

112 U. S. 439-451, 28 L. 764, FORTIER v. NEW ORLEANS BANK.

Syl. 3 (X, 915). Governmental control of national banks.

Approved in Brigham v. Peter Bent Brigham Hospital, 134 Fed. 528, 67 C. C. A. 393, holding state alone can object to amount of property a charitable corporation can hold; Tidwell v. Chiricahua Cattle Co., 5 Ariz. 362, 53 Pac. 195, admitting deeds against trespasser, over objection that title was in United States; Schoonover v. Petcina, 126 Iowa, 268, 100 N. W. 493, holding national bank president loaning money of real estate and taking mortgages in own name, not estopped from objecting to personal assessment.

112 U. S. 452-477, 28 L. 751, LAMAR v. MICOU.

Syl. 5 (X, 916). Infant cannot change own domicile.

Approved in Young v. Hiner, 72 Ark. 303, 79 S. W. 1063, following rule.

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Syl. 6 (X, 916). Guardian without extraterritorial power.

Approved in In re Brady, 10 Idaho, 370, 79 Pac. 75, retaining jurisdiction to settle general guardian's account, where ward's removal by foreign guardian from state unauthorized.

Syl. 12 (X, 917). Guardian may invest in bonds.

Approved in In re Allis' Estate, 123 Wis. 226, 101 N. W. 366, sanctioning investment of trust funds in railroad and street railway bonds.

112 U. S. 485-489, 28 L. 768, BIRDSELL v. SHALIOF.

Syl. 1 (X, 918). Licensee cannot sue for infringement.

Distinguished in Wooster v. Crane & Co., 147 Fed. 516, allowing equitable owner to sue for infringement of copyright.

Syl. 5 (X, 919). Patentee—Damages against maker and user.

Approved in Eldred v. Breitwieser, 132 Fed. 252, holding owner not estopped from maintaining action against user by adverse judgment in action against manufacturer; Westinghouse etc. Co. v. Mutual Life Ins. Co., 129 Fed. 222, holding decree against maker no defense to suit against user for infringement.

Syl. 6 (X, 919). Licensee may join for infringement.

Approved in Daimler Mfg. Co. v. Conklin, 145 Fed. 956, holding licensee may join bill showing interest subject to impairment by infringement.

Distinguished in Bredin v. Robinson, 145 Fed. 945, denying owner's right to sue alone, where profits inure to licensee's sole benefit.

112 U. S. 490-495, 28 L. 822, MARYLAND v. BALDWIN.

Syl. 1 (X, 920). Jurisdiction—Real party in interest.

Approved in Burrell v. United States, 147 Fed. 47, entertaining jurisdiction, where plaintiff, a corporation of Washington, defendant contractor, a resident of California, and surety company organized in Connecticut; United States v. Barrett, 135 Fed. 194, denying jurisdiction of suit on contractor's bond in name of United States by person furnishing material. See 101 Am. St. Rep. 171, note.

Syl. 4 (X, 921). Agreement to marry alone insufficient.

Approved in Sorenson v. Sorenson, 68 Neb. 508, 100 N. W. 933, holding mere "agreement to live together as husband and wife" insufficient; Reaves v. Reaves, 15 Okl. 256, 82 Pac. 495, sustaining on facts a mere agreement to marry followed by open cohabitation.

112 U. S. 502-506, 28 L. 811, ENGLAND v. GEBHARDT.

Syl. 3 (X, 922). Court's opinion not part of record.

Approved in Townsend v. Beatrice Com. Assn., 139 Fed. 383, refusing to review equity case in absence of evidence, although opinion filed by lower court.

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112 U. S. 514-526, 28 L. 812, THE ELIZABETH JONES.

Syl. 1 (X, 923). Collision—Vessel changing course.

Approved in The Metamora, 144 Fed. 938, blaming vessel not allowing for yawing of another, close-hauled in strong wind and heavy sea; The Eagle Wing, 135 Fed. 829, holding privileged vessel at fault changing course just prior to collision; The Sitka, 132 Fed. 868, holding tow at fault changing course to starboard after collision between tug and other vessel.

Syl. 2 (X, 923). Collision—Vessel placed in danger.

Approved in Minnesota S. S. Co. v. Lehigh Valley etc. Co., 129 Fed. 28, 63 C. C. A. 672, holding master excusable even if all precautions were not taken.

112 U. S. 26-536, 28 L. 816, BRITTON v. THORNTON.

Syl. 1 (X, 924). Wills—Determinable fee.

Approved in Yocum v. Parker, 134 Fed. 207, 67 C. C. A. 227, holding devise to son and on death without issue to collateral heirs, title vested in devisee upon birth of issue.

112 U. S. 536-580, 28 L. 770, CHEW HEONG v. UNITED STATES.

Syl. 2 (X, 925). Repeals by implication not favored.

Approved in Guthrie v. Sparks, 131 Fed. 449, 65 C. C. A. 427, holding act denying fiscal court power to levy tax to pay railroad bond indebtedness, unrepealed by later act creating power to levy general county taxes; Giles v. Dennison, 15 Okl. 63, 78 Pac. 177, denying prior act repealed by later, both providing plans to raise revenue to construct buildings; Carpenter v. Russell, 13 Okl. 283, 73 Pac. 932, holding act covering only probate matters not repealed by act giving probate judges jurisdiction of causes, civil and criminal; Allen v. Reed, 10 Okl. 156, 63 Pac. 877, holding congressional act reserving county seats not defeating territorial act providing for an election for county seats; United States v. Foreman, 56 Okl. 257, 48 Pac. 98, allowing entryman choice of statutes to recover money paid for land erroneous, allowed and subsequently canceled.

Syl. 4 (X, 926). Statutes not given retrospective operation.

Approved in Mottley v. Louisville etc. R. Co., 150 Fed. 411, holding contract awarding free passage over lines in consideration of release of damages not affected by subsequent statute prohibiting free transportation.

112 U. S. 580-600, 28 L. 798, HEAD-MONEY CASES.

Syl. 3 (X, 927). Uniform tax defined.

Approved in State v. Chicago, Burlington etc. Ry. Co., 195 Mo. 240, 93 S. W. 787, declaring fifteen cent special road tax, exempting Kansas City and St. Joseph, void; McMillian v. Payne Co. Commrs., 14 Okl. 667, 79 Pac. 900, holding tax levy not void because heavier on people of township authorized to erect bridge.

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Syl. 7 (X, 928). Treaties subject to congressional action.

Approved in Wadsworth v. Boysen, 148 Fed. 774, holding in case of conflict, legislative amendment will prevail over treaty requiring ratification; United Shoe Mach. Co. v. Duplessis etc. Co., 148 Fed. 36, holding treaty not void because not self-executory, but dependent on congressional action; Hong Wing v. United States, 142 Fed. 130, holding congressional act continued exclusive laws in force regardless of existing treaty obligations; Wyman, Petitioner, 191 Mass. 279, 77 N. E. 380, enforcing treaty rights of Russian vice-consul to be administrator to the exclusion of public administration.

112 U. S. 604-609, 28 L. 835, BOND v. DUSTIN.

Syl. 2 (X, 930). Jury waived by written stipulation.

Distinguished in Shields v. Mongollon etc. Co., 137 Fed. 544, 70 C. C. A. 123, reviewing assignments of error where jury waived in open court and in writing.

Syl. 3 (X, 930). Motion to arrest judgment—Evidence.

Approved in Demolli v. United States, 144 Fed. 366, refusing to examine other parts of record to supply defect in judgment in criminal case.

112 U. S. 609-623, 28 L. 837, MEMPHIS R. R. CO. v. COMMISSIONERS.

Syl. 1 (X, 931). Taxation exemption a personal privilege.

Approved in Baltimore etc. Ry. Co. v. Wicomico Co., 103 Md. 281, 285, 286, 63 Atl. 679, 681, holding purchaser at foreclosure sale of corporate property and immunity from taxation, did not acquire exemption.

Distinguished in Wicomico Co. Commrs. v. Bancroft, 135 Fed. 982, holding exemption of railroad from taxation under special act of legislature passed to successors in interest.

Syl. 3 (X, 932). Charter distinguished from franchises.

Approved in Vicksburg v. Vicksburg Waterworks Co., 202 U. S. 464, 50 L. 1109, 26 Sup. Ct. 660, holding contractual rights under municipal ordinance passed by foreclosure sale of franchise and corporate property; Julian v. Central Trust Co., 193 U. S. 106, 48 L. 637, 24 Sup. Ct. 399, holding upon foreclosure sale franchises and corporate property ceased to be liable for subsequent debts of corporation; Grand Rapids & I. R. Co. v. Osborn, 193 U. S. 29, 48 L. 604, 24 Sup. Ct. 310, denying purchaser's right under foreclosure sale of franchise and property to incorporate with privileges of old corporation; Omaha Water Co. v. City of Omaha, 147 Fed. 15, holding purchaser at foreclosure sale had right to collect rates specified in contract between corporation and city; Farmers' Loan etc. Co. v. Meridian W. W. Co., 139 Fed. 667, allowing mortgagee a receiver, where city obtains decree depriving corporation of right to operate water plant; Iron Silver Min. Co. v. Cowie, 31 Colo. 453, 72 Pac. 1068, entertaining jurisdiction where decision of lower court

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based upon determination of corporations in ability to do business; Detroit etc. R. R. Co. v. Campbell, 140 Mich. 392, 103 N. W. 859, allowing corporation in hands of receiver to condemn land for right of way; Southwestern Tel. etc. Co. v. San Antonio, 32 Tex. Civ. 103, 73 S. W. 860, holding corporate franchises property within city charter's provisions, taxing all property.

Miscellaneous. Cited in Southern Ry. Co. v. Greensboro etc. Co., 134 Fed. 93, holding suit against corporation commissioners to enjoin alleged void order not suit against state.

112 U. S. 624-645, 28 L. 828, UNION METALLIC CARTRIDGE CO. v. U. S. CARTRIDGE CO.

Syl. 4 (X, 934). Patents—Reissue as to discarded claim.

Approved in Rembert etc. Co. v. American Cotton Co., 129 Fed. 369, 64 C. C. A. 25, restricting patent to method underlying successful operation.

112 U. S. 645, 659, 28 L. 846, UNITED STATES v. GREAT FALLS MFG. CO.

Syl. 1 (X, 934). Private property taken for public use.

Approved in Penrhyn Slate Co. v. Granville El. etc. Co., 181 N. Y. 84, 73 N. E. 566, dismissing riparian owner's suit against city to restrain diversion on ground of laches.

Distinguished in Hijo v. United States, 194 U. S. 322, 48 L. 996, 24 Sup. Ct. 727, denying United States' liability for use of Spanish vessel captured during war with Spain; Town of Nahant v. United States, 136 Fed. 283, 69 L. R. A. 723, 70 C. C. A. 641, denying municipal corporation compensation for state franchises within territory condemned by United States.

Syl. 2 (X, 935). Owner's remedies—Property for public use.

Approved in Zimmerman v. Kansas City etc. R. Co., 144 Fed. 624, allowing owner to recover all damages sustained by railroad appropriating lot without exercise of eminent domain; United States v. Foreman, 5 Okl. 253, 257, 48 Pac. 97, 98, holding entryman may sue to recover for land erroneously allowed.

Syl. 3 (X, 935). Eminent domain—Implied obligation to pay.

Approved in Christie-Street Com. Co. v. United States, 136 Fed. 329, 69 C. C. A. 464, holding action to recover back taxes illegally collected maintainable without regard to whether on contract or in tort; O'Reilly De Camara v. Brooke, 135 Fed. 390, holding United States officer liable in tort for property taken for public use, although government also liable on contract.

112 U. S. 670-676, 28 L. 862, MARTINGTON v. FAIRBANKS.

Syl. 1 (X, 936). Exception to general finding.

Approved in United States etc. Co. v. Board of Commrs., 145 Fed. 151, refusing to consider question of sufficiency of evidence to sustain finding;

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National etc. Co. v. Cincinnati etc. Ry. Co., 145 Fed. 35, refusing to review question whether judgment supported by facts found; Fitzgerald v. Bassford, 142 Fed. 134, refusing to review on assignment of error that court erred rendering judgment for plaintiff and against defendants; West v. Houston Oil Co., 136 Fed. 350, 69 C. C. A. 169, refusing to review sufficiency of fact found to support judgment; Paul v. Delaware etc. R. Co., 130 Fed. 954, 956, holding, in absence of exceptions taken to questions of law, general verdict containing mixed questions of law and fact, conclusive as to both; Eureka Co. Bank v. Clarke, 130 Fed. 327, 64 C. C. A. 571, refusing to weigh evidence to determine whether court's findings justified thereby.

Syl. 3 (X, 937). Finding equivalent to verdict.

Approved in Delaware etc. R. Co. v. Kutter, 147 Fed. 57, refusing to review weight of evidence where findings general; Streeter v. Sanitary Dist. of Chicago, 133 Fed. 126, 66 C. C. A. 190, refusing in absence of special findings on stipulation of acts to weigh evidence and determine facts; Paul v. Delaware etc. R. Co., 130 Fed. 956, denying request for special findings of facts where action tried without jury; Eureka Co. Bank v. Clarke, 130 Fed. 326, 64 C. C. A. 571, refusing to weigh evidence to determine whether court's findings justified thereby; York v. Washburn, 129 Fed. 566, 64 C. C. A. 132, refusing to inquire whether finding sustained by evidence.

Syl. 4 (X, 938). Matters presented by bill of exceptions.

Approved in Paul v. Delaware etc. R. Co., 130 Fed. 954, holding in case tried without jury, whole testimony cannot be reviewed by bill of exceptions.

112 U. S. 693-696, 28 L. 871, WHITNEY v. MORROW.

Syl. 2 (X, 939). Title not strengthened by subsequent patent.

Approved in Kneeland v. Korter, 40 Wash. 368, 82 Pac. 611, 1 L. R. A. (N. S.) 745, holding territorial grantees entitled to land, although patent issued after Washington became state.

112 U. S. 696-710, 28 L. 866, KNICKERBOCKER LIFE INS. CO. v. PENDLETON.

Syl. 1 (X, 939). Policy forfeited by nonpayment of note.

Approved in Ressler v. Fidelity etc. Life Ins. Co., 110 Tenn. 414, 420, 75 S. W. 735, 737, holding policy voided by nonpayment of note, although silent thereon.

Syl. 4 (X, 940). Insurance—Liability denied, proof waived.

Approved in Phoenix Ins. Co. v. Kerr, 129 Fed. 727, 64 C. C. A. 251, 66 L. R. A. 569, holding denial of contract, waiver of proof of loss; Greenwich Ins. Co. v. State, 74 Ark. 79, 84 S. W. 1028, holding proof of loss waived by adjuster's determination to stand on offer; Seely v. Manhattan etc. Ins. Co., 72 N. H. 54, 55 Atl. 426, holding proof of death unnecessary where company claimed policy lapsed; Madden & Co.

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v. Phoenix Ins. Co., 70 S. C. 301, 49 S. E. 857, where at time of applying for insurance insured showed inventory to agent, who said it was all right, insurer waived right to insist that it did not conform to iron-safe clause in policy.

112 U. S. 717-720, 28 L. 864, THAYER v. LIFE ASSN.

Syl. 1 (X, 941). Trustee an indispensable party.

Approved in In re E. T. Kenney Co., 136 Fed. 455, holding cestuis que trust not necessary for proper parties in action to recover moneys for trust estate.

112 U. S. 720-733, 28 L. 872, ST. PAUL R. R. CO. v. WINONA R. R. CO.

Syl. 3 (X, 942). Public lands—Priority of selection.

Approved in Sjoli v. Dreschel, 199 U. S. 566, 50 L. 312, 26 Sup. Ct. 154, holding railroad acquired no interest by merely filing list of selection to supply deficiencies within place limits; Humbird v. Avery, 195 U. S. 508, 49 L. 299, 25 Sup. Ct. 123, holding sales by railroad after acceptance of act cannot defeat provisions thereof with reference to conflicting claims; State v. Trustees, 47 Fla. 325, 35 So. 995, holding neither swamp land grant nor conformatory act of Congress of 1850 affected provisions of school land grant of 1845; Sage v. Maxwell, 91 Minn. 534, 99 N. W. 45, sustaining settler's rights to land granted to railroad where selection not made and approval given.

112 U. S. 733-737, 28 L. 861, ST. PAUL R. R. v. UNITED STATES.

Syl. 2 (X, 943). United States—Assignment of claim void.

Approved in Nutt v. Knut, 200 U. S. 20, 50 L. 353, 26 Sup. Ct. 216, holding contract for prosecution of claim, made a lien thereon, void.

112 U. S. 737-742, 28 L. 859, PEUGH v. PORTER.

Syl. 2 (X, 944). Assignment—Fund appropriated creates lien.

Approved in Union Trust Co. v. Bulkeley, 150 Fed. 513, holding parol assignment secured by notes to secure money for business creates valid lien against assignor's bankruptcy trustee; In re Cramond, 145 Fed. 977, denying right of bank holding assignment of contractor's claim right to file lien.

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CXIII UNITED STATES.

113 U. S. 1-9, 28 L. 896, COLE v. LA GRANGE.

Syl. 1 (X, 946). Eminent domain—Private use.

Approved in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 252, 49 L. 467, 25 Sup. Ct. 251, upholding removability of proceeding for condemnation of land under Ky. St., §§ 835-839, where diverse citizenship existed; Scott v. La Porte, 162 Ind. 48, 68 N. E. 282, holding void city ordinance empowering water company to construct waterworks and binding city to pay large sum for twenty-one years as water rentals to trustee of company's bondholders, and pledging city's taxing power to meet charges; Castner v. Minneapolis, 92 Minn. 87, 99 N. W. 361, city council cannot reimburse defeated candidate for public office for expense of election contest.

Distinguished in dissenting opinion in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 260, 49 L. 471, 25 Sup. Ct. 251, majority upholding removability of proceeding for condemnation under Ky. St., §§ 835-839, where diverse citizenship existed.

113 U. S. 9-26, 28 L. 889, HEAD v. AMOSKEAG MFG. CO.

Syl. 1 (X, 947). Due process—Mill dam act.

Approved in Otis Co. v. Ludlow Mfg. Co., 201 U. S. 151, 50 L. 705, 26 Sup. Ct. 353, upholding Mass. Pub. St., c. 190, giving mill owners right to flowage to develop water-power, where compensation secured to upper owner for injuries resulting to lands; Brown v. Gerald, 100 Me. 368, 109 Am. St. Rep. 526, 61 Atl. 792, 70 L. R. A. 472, denying right of generator and seller of electric power for manufacturing purposes to erect line of poles and wires across private property; Otis Co. v. Ludlow Manf. Co., 186 Mass. 95, 104 Am. St. Rep. 563, 70 N. E. 1012, upholding compensation provided in Pub. St. 1882, c. 190, § 2, where another mill site has been previously appropriated; Minnesota Canal etc. Co. v. Koochiching Co., 97 Minn. 448, 107 N. W. 412, generation of electricity by water-power for sale to general public is public use, but development of water-power is not; State v. White River Power Co., 39 Wash. 662, 82 Pac. 151, 2 L. R. A. (N. S.) 842, taking of land by electric power corporation which has no city franchise is taking for private use.

113 U. S. 27-32, 28 L. 923, BARBIER v. CONNOLLY.

Syl. 1 (X, 947). Law ordinance—Equal protection.

Approved in Grainger v. Douglass etc. Jockey Club, 148 Fed. 521, 524, 526, upholding Ky. Act 1906, regulating racing of running horses;

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French v. Davidson, 143 Cal. 662, 77 Pac. 664, upholding Stat. 1899, p. 32, requiring vaccination of school children; In re Finley, 1 Cal. App. 210, 81 Pac. 1046, upholding Pen. Code, § 246, imposing death penalty on life convict making malicious assault with deadly weapon; State v. Reynolds, 77 Conn. 134, 58 Atl. 757, upholding Gen. St. 1902, § 1358, prohibiting engaging in temporary business of selling provisions within one mile of fair grounds of any incorporated society, without latter's consent; Christy v. Elliott, 216 Ill. 40, 108 Am. St. Rep. 196, 74 N. E. 1039, upholding Laws 1903, pp. 301, 302, regulating speed of automobiles; McKinster v. Sager, 163 Ind. 679, 106 Am. St. Rep. 268, 72 N. E. 857, 68 L. R. A. 273, holding void Acts 1903, p. 276, regulating sales of stock of merchandise not in ordinary course of trade; Sellers v. Hayes, 163 Ind. 434, 72 N. E. 123, holding void Acts 1901, p. 505, regulating sales of stock of merchandise, not in ordinary course of trade; Adams Express Co. v. State, 161 Ind. 346, 67 N. E. 1039, upholding Burns' St. 1901, §§ 3312b, et seq., prohibiting unjust discriminations by express companies; Iowa etc. Ins. Assn. v. Gilbertson, 129 Iowa, 669, 106 N. W. 157, upholding Code Supp. 1902, § 1333d, requiring insurance companies, except county mutuals, not organized for profit, to pay tax on gross receipts after deducting losses; Brady v. Mattern, 125 Iowa, 168, 106 Am. St. Rep. 291, 100 N. W. 362; upholding Acts 29th Gen. Assem., p. 45, c. 77, regulating conduct of building and loan business by unincorporated societies; Templar v. Barbers' Board of Examiners, 131 Mich. 255, 100 Am. St. Rep. 610, 90 N. W. 1059, holding void act of 1899, providing for licensing of barbers and prohibiting grant of certificates to aliens; State v. Boehm, 92 Minn. 378, 100 N. W. 97, upholding Laws 1895, p. 653, c. 273, declaring certain weeds nuisances; State v. Cudahy Packing Co., 33 Mont. 185, 82 Pac. 835, holding void Penal Code, §§ 321, 325, prohibiting combinations to fix price of commodities and exempting persons engaged in agriculture or horticulture; Wenham v. State, 65 Neb. 406, 91 N. W. 425, 58 L. R. A. 825, upholding act of 1899, regulating hours of labor of females in factories, stores, hotels, and restaurants; Ex parte Boyce, 27 Nev. 337, 75 Pac. 5, 65 L. R. A. 47, upholding act of 1903, regulating hours of labor in mines and smelters; People v. Reardon, 184 N. Y. 445, 112 Am. St. Rep. 636, 77 N. E. 974, upholding Laws 1905, pp. 474, 477, §§ 315, 324, imposing tax on transfers of corporate stock; People v. Warden, 183 N. Y. 226, 76 N. E. 12, 2 L. R. A. (N. S.) 859, upholding Laws 1904, c. 432, regulating employment agencies in cities of first and second class; Cowart v. City Council, 67 S. C. 44, 45 S. E. 125, upholding ordinance providing that lenders, except banks, loaning money on personalty, should pay licenses, according to schedule of gross business; Standard Oil Co. v. Fredericksburg, 105 Va. 91, 52 S. E. 820, holding void city ordinance imposing one tax on corporations transporting oil in bulk in tank cars or pipes, and another tax on persons selling oil brought in for distribution in barrels; dissenting opinion in Wright v. Hart, 182 N. Y. 354, 358, 75 N. E. 413, 414, 2 L. R. A. (N. S.) 338, majority holding void Laws 1902, p. 1249, making sales of stock of merchandise in bulk void as to creditors unless inventory made and purchaser notifies creditors; dissenting opinion

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in State v. Barrett, 138 N. C. 649, 50 S. E. 512, majority upholding Laws 1903, p. 749, making it unlawful for one not licensed retailer to sell liquor, and making keeping of more than quart prima facie keeping for sale.

Syl. 2 (X, 950). Fourteenth amendment—Police power.

Approved in Glucose Ref. Co. v. City of Chicago, 138 Fed. 217, upholding smoke ordinance; State v. Robb, 100 Me. 185, 60 Atl. 876, upholding ordinance giving exclusive privilege of collecting and removing garbage to person specially appointed, and prohibiting others from engaging in same business; State v. Shattuck, 96 Minn. 49, 104 N. W. 720, upholding Laws 1903, p. 606, § 45, prohibiting sale of ruffed grouse; City of Butte v. Paltrovich, 30 Mont. 23; 104 Am. St. Rep. 698, 75 Pac. 522, upholding ordinance regulating hours of operation of pawnshops, loan offices, and second-hand stores only; Johnson v. Spartan Mills, 68 S. C. 356, 47 S. E. 702, upholding Code 1902, §§ 2712, 2720, making it unlawful to pay wages in evidences of indebtedness redeemable in other than lawful money and exempting agricultural contracts; dissenting opinion in Lochner v. New York, 198 U. S. 65, 49 L. 945, 25 Sup. Ct. 539, majority holding void New York act 1897, regulating hours of labor in bakeries.

Syl. 3 (X, 952). Federal question—Conformity to federal constitution.

Approved in dissenting opinion in Ex parte Boyce, 27 Nev. 366, 75 Pac. 16, 65 L. R. A. 47, majority upholding act of 1903, regulating hours of labor in mines and smelters.

113 U. S. 40-50, 28 L. 885, DAVIDSON v. VON LINGIN.

Syl. 3 (X, 953). Breach of charter-party—Repudiation.

Approved in Mutual etc. Life Assn. v. Austin, 142 Fed. 401, construing uncontestable clause in insurance policy; Ross-Meehan Foundry Co. v. Royer Wheel Co., 113 Tenn. 376, 83 S. W. 168, 68 L. R. A. 829, contract by which plaintiff agrees to make and deliver to defendant for three years all castings required by it, each delivery payable within sixty days, may be terminated on failure to make payment; The Gordon Campbell, 141 Fed. 436, arguendo.

113 U. S. 59-73, 28 L. 901, HOLLISTER v. BENEDICT ETC. MFG. CO.

Syl. 1 (X, 953). Patentee's rights exclusive of government.

Approved in dissenting opinion in International Postal Supply Co. v. Bruce, 194 U. S. 608, 48 L. 1138, 24 Sup. Ct. 820, majority holding inability to make United States party, defeats right of patentee for stamp-canceling machine, to enjoin use by postmaster of infringing machines of which government is lessee.

Syl. 5 (X, 954). Patentable invention—Mechanical skill.

Approved in New York etc. Belting Co. v. Sierer, 149 Fed. 770, Furness & Watts patent No. 527,961, for tile floor, is void in view of

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prior act; Sloan Filter Co. v. Portland Gold Min. Co., 139 Fed. 26, holding void Sloan patent No. 587,874, for barrel filter for filtration of precious metal solutions; Wilce v. Bush Temple of Music Co., 134 Fed. 391, 67 C. C. A. 371, holding void Wilce & Burnham patent No. 531,711, for improved flooring.

113 U. S. 73-81, 28 L. 927, HESS v. REYNOLDS.

Syl. 1 (X, 956). Removal—Suit against administrator—Claims.

Approved in Pourier v. McKenzie, 147 Fed. 289, upholding federal jurisdiction of suit by diverse citizens to determine shares in estate of decedent, where property held partly by federal receiver, and partly by decedent's surviving partner; Barber Asphalt Pav. Co. v. Morris, 132 Fed. 949, 67 L. R. A. 761, 66 C. C. A. 55, Duluth charter regulating appeals from allowance or rejection of claims and prohibiting payments pending appeal, does not affect federal court's power to enforce judgments on such claims.

Syl. 3 (X, 957). Removal—Time to apply.

Approved in Carpenter v. New York etc. R. R. Co., 184 Mass. 101, 68 N. E. 29, hearing before auditor does not constitute trial so as to preclude plaintiff from being entitled to nonsuit after hearing, but before filing of auditor's report.

(X, 956.) Miscellaneous. Cited in Cheshire Prov. Inst. v. Anglo-American Land etc. Co., 132 Fed. 969, 66 C. C. A. 122, court may render judgment against corporation in hands of receiver to determine question of debt or no debt.

113 U. S. 81-84, 28 L. 938, POLLEYS v. BLACK RIVER IMPROVEMENT CO.

Syl. 3 (X, 958). When time for writ of error runs.

Approved in In re McCall, 145 Fed. 901, time limit for review of orders confirming bankrupt's composition, by appeal, runs from entry of confirmation order on records.

113 U. S. 89-96, 28 L. 934, GRIFFITH v. GODEY.

Syl. 1 (X, 959). Conclusiveness of settlement of executor's account.

Approved in Froebrich v. Lane, 45 Or. 21, 106 Am. St. Rep. 634, 76 Pac. 352, equity court may set aside county court's decree settling administrator's final account procured by fraud, though B. & C. Comp., § 911, gives county court exclusive jurisdiction to settle such accounts; Thomas v. Hawpe, 35 Tex. Civ. 315, 80 S. W. 131, where administrator filed account showing balance applicable to unpaid claims, but did not give debts of estate, nor names of creditors, or ask for discharge, and court settled it in form for annual exhibit it is not final account.

Syl. 2 (X, 960). Equity—Omission from administrator's account.

Approved in Tucker v. Stewart, 121 Iowa, 717, 97 N. W. 149, upholding suit to set aside order finally discharging administrator for errors

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in settlement brought within five years after discovery of errors. See 106 Am. St. Rep. 642, note.

113 U. S. 97-104, 28 L. 906, ROWELL v. LINDSAY.

Syl. 4 (X, 961). Patents—Equivalents.

Approved in American Can Co. v. Hickmott Asparagus etc. Co., 137 Fed. 88, upholding machine of Eldridge patent No. 712,998, for can-body forming machine; Cleveland Foundry Co. v. Detroit etc. Stove Co., 131 Fed. 751, holding void Jearves patent No. 475,401, for oil-burner.

Syl. 5 (X, 961). Infringement of part of combination.

Approved in Bullock etc. Mfg. Co. v. Westinghouse etc. Mfg. Co., 129 Fed. 109, 63 C. C. A. 607, following rule; Dodge Coal Storage Co. v. New York etc. R. R. Co., 139 Fed. 981, holding void Piez & Beaumont patents Nos. 668,960 and 688,111, for improvements in coal-storage apparatus; Avery v. Case Plow Works, 139 Fed. 886, construing Avery patent No. 650,771, for double mold-board plow.

113 U. S. 104-116, 28 L. 930, FINDLAY v. McALLISTER.

Syl. 1 (X, 961). Conspiracy to defeat tax to pay judgment.

Distinguished in Bitzer v. Washburn, 121 Iowa, 468, 96 N. W. 981, denying judgment creditor's action for conspiracy where he levied on realty and garnisheed purchaser and garnishee secured discharge without notice after sale.

113 U. S. 116-127, 28 L. 915, CENTRAL RAILROAD ETC. CO v. PETTUS.

Syl. 2 (X, 962). Attorney's fees for recovering fund.

Approved in Harrigan v. Gilchrist, 121 Wis. 391, 99 N. W. 991, following rule; McCourt v. Singers-Bigger, 145 Fed. 114, stockholder who by suit on behalf of corporation recovers fund wrongfully diverted by officers is entitled to reimbursement therefrom for attorney's fees, but defending stockholders are not; Cuyler v. Atlantic etc. R. Co., 132 Fed. 572, federal equity court has discretion to allow counsel fees to joint owner of property who has sued for its protection and it has been brought within control of court; Lamar v. Hall, 129 Fed. 83, 63 C. C. A. 521, where, after appointment of receiver in suits by lien creditors against corporation, attorneys for minority stockholders filed bill alleging former suits brought in bad faith and co-receiver appointed, and on trial bad faith not shown and sale set aside for inadequacy of price, and increased price obtained on resale, attorneys not entitled to fees out of proceeds; Bartholomew v. Union Trust Co. (Myers v. Mut. Life Ins. Co.), 36 Ind. App. 329, 75 N. E. 31, services rendered by attorney for intervener in receivership, who asked that bond and mortgage given by him to insolvent be found paid and ordered canceled, are not payable out of receivership fund; Kimble v. Board of Commrs., 32 Ind. App. 389, 66 N. E. 1027, where defendant, who secured judgments against county officers for misappropriated county funds, and paid

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over amounts recovered less expenses of suits and attorneys, is entitled to such items; Coffman v. Gates, 110 Mo. App. 488, 85 S. W. 660, where one holding interest in lands in fee and remainder as trustee expended money in defense of ejectment suit, he could look to trust property for proportionate reimbursement; Carpenter v. United States Fidelity etc. Co., 123 Wis. 215, 101 N. W. 407, county court may determine amount due administrator for legal services, and on application of attorneys after administrator has become defaulter decree amount thereof lien on estate's assets in favor of attorneys; Butler v. Conwell, 14 Wyo. 173, 82 Pac. 952, where attorney for creditors of insolvent collected and paid to receiver fund for benefit of all creditors, attorney's claim on fund is valid whether presented for allowance by employing creditors or by attorney himself.

113 U. S. 135-142, 28 L. 954, ACKLEY SCHOOL DIST. v. HALL.

Syl. 2 (X, 964). Negotiability of municipal bond.

Approved in National Salt Co. v. Ingraham, 143 Fed. 807, corporations' certificates of indebtedness not rendered non-negotiable by provision that maker may pay principal before maturity.

Syl. 4 (X, 964). Statutes embracing one subject—Title.

Approved in Blair v. Chicago, 201 U. S. 452, 50 L. 823, 26 Sup. Ct. 427, upholding statutes constituting charters of Chicago street railway companies.

113 U. S. 149-152, 28 L. 962, BICKNELL v. COMSTOCK.

Syl. 1 (X, 965). Land patent—Officer's mutilation of record.

Approved in United States v. Laam, 149 Fed. 585, land patent duly issued on decision of proper officers and recorded in proper land department book passes title without delivery; Sage v. Rudnick, 91 Minn. 334, 100 N. W. 108, after passing of title to land grant by definite location of road, pendency of adverse claim before Interior Department did not suspend running of limitations in favor of adverse claim.

Syl. 3 (X, 965). Adverse possession gives perfect title.

Approved in Linton v. Heye, 69 Neb. 455, 111 Am. St. Rep. 559, 95 N. W. 1041, statute of limitations respecting actions for recovery of realty does not deprive owner of property without due process; Wilson v. Braden, 56 W. Va. 376, 107 Am. St. Rep. 930, 49 S. E. 411, determining question of sufficiency of adverse possession.

113 U. S. 157-179, 28 L. 939, CONSOLIDATED SAFETY VALVE CO. v. CROSBY STEAM GAUGE ETC. CO.

Syl. 4 (X, 967). Patents—Mere mechanical skill.

Approved in Brown Bag Filling Mach. Co. v. Drohen, 140 Fed. 101, upholding Cummings patent No. 573,171, for machine for filling paper bags.

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Syl. 7 (X, 968). Patent infringement—Specific differences.

Approved in Riss v. Barth Mfg. Co., 136 Fed. 854, 69 C. C. A. 528, Riss patent No. 356,963, for electric circuit closing apparatus, infringed by apparatus of Dillon patent No. 676,426.

Syl. 9 (X, 968). Patentable novelty—Extensive use.

Approved in Robins etc. Belt Co. v. American etc. Mach. Co., 145 Fed. 926, upholding Robins patent No. 571,604, for belt conveyor.

Distinguished in Mayo Knitting etc. Co. v. E. Jenckes Mfg. Co., 133 Fed. 541, 66 C. C. A. 503, holding void Mayo patent No. 461,357, claim 11, for circular knitting machine.

Syl. 10 (X, 969). Patent for safety valve.

Approved in Albright v. Langfeld, 131 Fed. 475, upholding Albright patent No. 439,086, for coin purse.

113 U. S. 179-199, 28 L. 908, BRYAN v. KENNETT.

Syl. 1 (X, 969). Property includes inchoate titles.

Approved in Corkran Oil etc. Co. v. Arnaudet, 111 La. 577, 35 So. 753, following rule.

Syl. 3 (X, 969). Suit against nonresident minor.

Approved in Cohen v. Portland Lodge etc. Elks, 144 Fed. 276, on service by publication on nonresident defendant under B. & C. Comp. Or., §§ 56, 57, minority of defendant immaterial.

Syl. 4 (X, 969). Judgments—Collateral attack.

Approved in Kittel v. Trustees etc. Improvement Fund, 139 Fed. 955, where trustees of Florida improvement fund, joined as defendants in foreclosure of lands covering certificate from them alleged in answer intention to comply with certificate they are estopped from denying authority to make certificate.

113 U. S. 199-202, 28 L. 948, NORTHERN LIBERTY MARKET CO. v. KELLY.

Syl. 1 (X, 970). Compromise note for lesser sum.

Approved in Tollman v. Quincy, 129 Fed. 975, where defendant's note transferred to plaintiff before maturity in settlement of pending suit, plaintiff's counsel being told it was given by maker to payee in settlement of account, it is no defense that it was accommodation paper.

113 U. S. 205-212, 28 L. 959, CARDWELL v. AMERICAN-BRIDGE CO.

Syl. 1 (X, 970). Navigable waters—Admission of state.

Approved in Manigault v. Springs, 199 U. S. 479, 50 L. 278, 26 Sup. Ct. 127, state constitution providing that navigable waters shall forever remain public highways does not prevent legislature from authorizing dam across stream to subserve drainage of lowlands.

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Syl. 2 (X, 971). State's power over navigable waters.

Approved in United States v. Union Bridge Co., 143 Fed. 392, company building bridge over navigable stream under state charter, providing it shall not obstruct navigation, may be compelled by United States to so alter it as not to obstruct navigation; Kansas City etc. R. R. Co. v. Wiygul, 82 Miss. 231, 33 So. 967, 61 L. R. A. 578, railroad which has constructed bridge over navigable interstate river under state grant may make necessary repairs; Seibert v. Missouri Pac. Ry. Co., 188 Mo. 672, 87 S. W. 999, 70 L. R. A. 72, refusing to interfere with decision of city authorities locating machinery for operating safety-gates at railroad crossing where thirty-nine feet of unobstructed space in highway left.

113 U. S. 216-218, 28 L. 983, CHEONG AH MOY v. UNITED STATES.

Syl. 1 (X, 972). Moot questions not decided.

Distinguished in Mackenzie v. Barrett, 141 Fed. 965, allowing habeas corpus where petitioner under arrest but out on bail.

113 U. S. 218-222, 28 L. 980, PRICE v. PENNSYLVANIA R. R. CO.

(X, 972.) Miscellaneous. Cited in Yarrington v. Delaware etc. Co., 143 Fed. 569.

113 U. S. 222-227, 28 L. 981, DAKOTA CO. v. GLIDDEN.

Syl. 2 (X, 973). Appeal—Evidence dehors record.

Approved in Ridge v. Mauker, 132 Fed. 601, 67 C. C. A. 596, determining conclusiveness of state decree against receivers appointed by court of another county; Barnes v. Lynch, 9 Okl. 22, 59 Pac. 999, applying rule where proceedings after judgment, for appointment of referee and taking accounting presented in support of motion to dismiss appeal, by attested copies of record and by affidavit.

113 U. S. 227-242, 28 L. 966, ANDERSON COUNTY COMMRS. v. BEAL.

Syl. 1 (X, 973). Municipal bonds—Recital.

Approved in Platt v. Hitchcock Co., 139 Fed. 933, applying rule where county commissioners, authorized to issue bonds not exceeding ten per cent of last preceding assessment, recited bonds issued pursuant to specified statutes and bonds issued after last assessment but board had power until few days later to alter assessment.

Syl. 4 (X, 974). Direction of verdict.

Approved in McGuire v. Blount, 199 U. S. 148, 50 L. 130, 26 Sup. Ct. 1, upholding direction of verdict in ejectment; Guild v. Pringle, 145 Fed. 314, upholding refusal to direct verdict in action against city contractor for death of pedestrian by falling into excavation where evidence conflicted; International Text Book Co. v. Heartt, 136 Fed. 133, 69 C. C. A. 127, applying principle in action against corporation for slanderous words of agent; Gunn v. Union R. R. Co., 27 R. I. 327, 62

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Atl. 121, upholding Gen. Laws 1896, c. 251, § 11, authorizing supreme court to direct judgment without further trial by jury; Woolf v. Washington etc. Nav. Co., 37 Wash. 503, 79 Pac. 999, it cannot be presumed that one killed at railway crossing was in exercise of due care where attendant facts show such was not case.

113 U. S. 243-249, 28 L. 987, HARVEY v. UNITED STATES.

Syl. 3 (X, 975). Interest on claim against government.

Approved in Watts v. United States, 129 Fed. 226, admiralty court in suit against government for damages for loss of British vessel through collision with naval vessel cannot allow interest where statute is silent.

113 U. S. 249-257, 28 L. 949, CENTRAL R. R. CO. v. MILLS.

Syl. 1 (X, 976). Removal—Diverse citizenship of one defendant.

Approved in Groel v. United Elec. Co., 132 Fed. 258, 259, 262, 265, in suit by stockholder on right of action in corporation, corporation is aligned with whichever party its interests appear to be for purposes of federal jurisdiction.

113 U. S. 310-315, 28 L. 999, THORNLEY v. UNITED STATES.

Syl. 2 (X, 980). Statutory construction where meaning plain.

Approved in Pittsburgh etc. Ry. Co. v. Naylor, 73 Ohio St. 120, 76 N. E. 506, 3 L. R. A. (N. S.) 473, where next of kin of one killed by wrongful act are alien nonresidents, administrator may sue for their benefit.

113 U. S. 316-321, 28 L. 989, BAYLIS v. TRAVELERS' INS. CO.

Syl. 1 (X, 981). Direction of verdict.

Approved in Gunn v. Union etc. R. R. Co., 27 R. I. 327, 62 Atl. 121, upholding Gen. Laws 1896, c. 256, § 11, authorizing supreme court to direct judgment without further trial by jury.

113 U. S. 322-327, 28 L. 1003, PNEUMATIC GAS CO. v. BERRY.

Syl. 1 (X, 981). Ratification of director's act by corporation.

Approved in Kessler v. Ensley, 141 Fed. 134, where property of corporation conveyed to trustees to sell and pay debts and company accepted reconveyance of remainder after debts paid, corporation cannot deny authority of trustees; Kessler v. Ensley Co., 129 Fed. 402, 411, determining right of minority stockholders to sue to set aside sale of corporation's land whereby it was defrauded.

113 U. S. 328-331, 28 L. 1005, EX PARTE BIGELOW.

Syl. 2 (X, 982). Habeas corpus—Judgment as nullity.

Approved in Valentina v. Mercer, 201 U. S. 138, 50 L. 695, 26 Sup. Ct. 368, denying habeas corpus to release one convicted of murder in first degree in state court on ground that court lost jurisdiction by instruction that only question was degree of murder; Felts v. Murphy,

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201 U. S. 129, 50 L. 692, 26 Sup. Ct. 366, denying habeas corpus where one convicted of murder in state court and court did not have testimony read to accused, who was nearly totally deaf.

113 U. S. 339, 340, 28 L. 978, SANTA ANNA v. FRANK.

Syl. 1 (X, 983). Appeal—Review of general findings.

Approved in Streeter v. Sanitary Dist. of Chicago, 133 Fed. 126, 66 C. C. A. 190, following rule.

113 U. S. 340-407, 28 L. 1015, McARTHUR v. SCOTT.

Syl. 2 (X, 984). Wills—Vesting of estates.

Approved in Rhode Island Hospital Trust Co. v. Noyes, 26 R. I. 335, 58 Atl. 1004, following rule; Brigham v. Peter Bent Brigham Hospital, 134 Fed. 523, 67 C. C. A. 393, where will directed residue to be invested by executors for twenty-five years and pay legacies from income and balance of income to be added to principal and form corporation to transfer property to it for care of sick, gift vested on testator's death; Taylor v. Stephens, 165 Ind. 203, 74 N. E. 981, will giving wife use of property for life and at her death property to go to children, gives children vested remainder; Bosworth v. Stockbridge, 189 Mass. 267, 75 N. E. 713, devise to executors to pay income to three persons and on death of one to be put at interest until all dead and then whole fund to go to others, gave latter vested estate.

Syl. 4 (X, 984). Remainders—Devise in trust.

Approved in Anderson v. Messinger, 146 Fed. 940, where will declared if either son died without descendants, survivor took his estate, and if latter died without descendants all should go to testator's brothers and sisters, sons acquired life estate with remainder to survivor in case one died without issue; Land Title etc. Co. v. McCoach, 129 Fed. 905, 64 C. C. A. 333, where bequest of residue was in trust, income to be paid to widow for life, remainder to children living at her death and issue of deceased children, remainder was not vested and bequests not subject to legacy tax under War Revenue Act, § 29; Archer v. Jacobs, 125 Iowa, 479, 481, 101 N. W. 199, where will devised quarter of estate to daughter for life, remainder to her children, but if she left no children then to testator's son, children in being took vested remainder.

Syl. 7 (X, 985). Equity—Who necessary parties.

Approved in Spaulding v. Evenson, 149 Fed. 917, where voluntary association with many members is represented by committee, suit is maintainable against members of committee in representative capacity; In re E. T. Kenney Co., 136 Fed. 455, where creditors of insolvent, prior to bankruptcy, assigned claims to committee to buy property and sell same for interest of assignors, beneficial interest of assignors in net proceeds of claims not provable in bankruptcy; Lynch v. United States, 13 Okl. 158, 73 Pac. 1101, where patent issued to homesteads for townsite and land platted and lots sold to diverse persons, government cannot cancel patent though it was procured by fraud; Cresap v.

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Cresap, 54 W. Va. 590, 46 S. E. 586, executrix claiming as devisee and also that property is individual property may set up individual claim in bill to construe will and settle estate.

Syl. 11 (X, 986). Remaindermen—Judgment setting aside will.

Approved in Anderson v. Messinger, 146 Fed. 949, where will left estate in remainder after death of surviving son to lineal descendants, life tenants could not prejudice remainderman by declaration of trust of property; Medill v. Snyder, 71 Kan. 594, 81 Pac. 218, time limited by statute of wills for bringing action in district court to contest will not be extended by Code Civ. Proc., § 23, relating to revival of actions; Downey v. Seib, 185 N. Y. 433, 434, 78 N. E. 67, 68, where father conveyed premises to daughter for life, remainder to her children, and if she died without issue to his sons, and sons conveyed fee to daughter while childless, children of sons not concluded by decree against sons reforming deed.

(X, 984.) Miscellaneous. Cited in Anderson v. Messinger, 146 Fed., 948, distinguishing between trust of executor as such is where executor is named as trustee in will.

113 U. S. 418-423, 28 L. 1013, UNITED STATES v. JORDAN.

Syl. 1 (X, 987). Refunding revenue taxes.

Approved in Thatcher v. United States, 149 Fed. 903, failure to present claim for refunding of legacy taxes illegally collected within time limited by Rev. St., § 3228, does not bar action thereon.

113 U. S. 449-452, 28 L. 1043, MORGAN v. HAMLET.

Syl. 1 (X, 988). Limitation—Claims against estate.

Approved in Boyle v. Boyle, 126 Iowa, 168, 101 N. W. 748, Code, § 3349, limiting time for presentation of claims against estate, applies to infants; Barry v. Minahan, 127 Wis. 576, 107 N. W. 491, construing Rev. St., § 3844, bars claims against estates not presented in time required.

(X, 988.) Miscellaneous. Cited in Schurmeier v. Connecticut etc. Ins. Co., 137 Fed. 45, 69 C. C. A. 22, federal courts follow state decisions.

113 U. S. 452-464, 28 L. 1038, CHASE v. CURTIS.

Syl. 1 (X, 989). Corporations—Reports of debts—Penal statutes.

Distinguished in Starkweather v. Brown, 25 R. I. 148, 55 Atl. 203, stockholders of manufacturing corporation having no factory in state are liable under stockholders' liability imposed by Pub. St., c. 155, for failure to file returns as required by § 11.

Syl. 2 (X, 989). Judgment against corporation as evidence.

Approved in Audenried v. East Coast Mining Co., 68 N. J. Eq. 462, 59 Atl. 582, in action against directors to enforce liability accruing to creditors of corporation under Laws 1896, p. 286, judgment not on

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merits against corporation obtained in another jurisdiction is not conclusive as to debt sued on.

113 U. S. 465-476, 28 L. 1055, ST. LOUIS, IRON MOUNTAIN ETC. R. CO. v. BERRY.

Syl. 1 (X, 990). Consolidation of corporations.

Approved in Lake Drummond Canal Co. v. Commonwealth, 103 Va. 354, 49 S. E. 511, corporation created on purchase at foreclosure of property and franchises of another corporation cannot claim tax immunity granted to old corporation.

Distinguished in Lee v. Atlantic etc. R. Co., 150 Fed. 790, construing agreement between corporations as merger and not consolidation.

113 U. S. 506-516, 28 L. 1102, PROVIDENT INSTITUTION ETC. v. MAYOR ETC. JERSEY CITY.

Syl. 3 (X, 992). Due process—Priority of water rents.

Approved in Arnold v. Knoxville, 115 Tenn. 210, 90 S. W. 472, upholding Acts 1905, p. 585, authorizing levy of special assessments for municipal improvements on abutting property benefited thereby; City of Grafton v. Holt, 58 W. Va. 188, 52 S. E. 23, water rates exacted by public corporation from actual consumers are not taxes.

Syl. 4 (X, 993). Priority of water rent liens.

Approved in City of East Grand Forks v. Luck, 97 Minn. 375, 376, 107 N. W. 394, 395, upholding Laws 1895, p. 113, §§ 291, 293, making owner of premises liable for water and light furnished by city to tenant; Richmond v. Williams, 102 Va. 743, 47 S. E. 847, creditors secured by deed of trust are not owners of land within Act 1892, providing for notice to owners of assessment for improvements.

113 U. S. 516-527, 28 L. 1098, UNION PAC. RY. CO. v. CHEYENNE.

Syl. 2 (X, 994). Enjoining collection of illegal tax.

Approved in Fargo v. Hart, 193 U. S. 503, 48 L. 767, 24 Sup. Ct. 498, upholding injunction against assessment for taxation of property of nonresident express company on mileage basis; Illinois Life Ins. Co. v. Newman, 141 Fed. 451, refusing to enjoin collection of tax levied under state statute on ground of illegality of statute alone.

113 U. S. 527-537, 28 L. 1113, ERHARDT v. BOARO.

Syl. 1 (X, 995). Mining notice—Course of vein.

Approved in Last Chance Min. Co. v. Bunker Hill etc. Co., 131 Fed. 590, 66 C. C. A. 299, where end lines of lode cross surface outcroppings, they determine extralateral right of claim without regard to angle at which they cross general course of vein; Loeser v. Gardiner, 1 Alaska, 646, where by miners' customs boundaries are marked

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by only one center stake at each end, boundaries are formed by end lines at right angles to center line drawn from one center stake to other, and by side lines parallel to center, and far enough therefrom to embrace twenty acres; Columbia Min. Co. v. Duchess Min. Co., 13 Wyo. 255, 79 Pac. 387, upholding sufficiency of notice, dated and signed, that undersigned claims by right of discovery ledge or deposit, described as 1500 feet in northwesterly direction from notice and 300 feet on each side of vein; Bonanza etc. Min. Co. v. Golden Head Min. Co., 29 Utah, 168, 80 Pac. 738, upholding sufficiency of notice of mining location.

Distinguished in dissenting opinion in Bonanza etc. Min. Co. v. Golden Head Min. Co., 29 Utah, 178, 80 Pac. 742, majority upholding sufficiency of notice of mining location.

Syl. 2 (X, 995). Mines—Discovery, appropriation, development.

Approved in Creede etc. Milling Co. v. Uinta Tunnel etc. Co., 196 U. S. 346, 49 L. 507, 25 Sup. Ct. 266, Rev. St., § 2320, does not require discovery of vein or lode before other steps taken to perfect location; Behrends v. Goldsteen, 1 Alaska, 525, discovery of mineral within boundary of naval reservation will not sustain location, which lies partly within and partly without reservation; Weed v. Snook, 144 Cal. 443, 77 Pac. 1025, prior locators of oil lands in actual possession engaged in erecting machinery for purpose of drilling are protected against clandestine subsequent entry prior to actual discovery of oil; dissenting opinion in Lily Min. Co. v. Kellogg, 27 Utah, 123, 74 Pac. 522, arguendo.

Syl. 3 (X, 995). Mines—Trespasser acquires no rights.

Cited in Tyee Consol. Min. Co. v. Langstedt, 1 Alaska, 460, arguendo.

Distinguished in Lockhart v. Leeds, 195 U. S. 437, 49 L. 269, 25 Sup. Ct. 76, upholding sufficiency of bill to restrain mining during pendency of suit, here defendants acquired title by relocation made pursuant to fraudulent conspiracy with complainant's partner, whereby partner was to fail to perfect locators.

Syl. 4 (X, 995). Mines—Protection of discoverer.

Approved in Bulette v. Dodge, 2 Alaska, 432, following rule; Redden v. Harlan, 2 Alaska, 405, where plaintiff staked and recorded placer location but made no discovery, and eleven months later defendants located same ground and began shaft, latter not enjoined.

Syl. 5 (X, 996). Miner's rules.

Approved in Butte City Water Co. v. Baker, 196 U. S. 124, 127, 49 L. 411, 412, 25 Sup. Ct. 211, upholding Mont. Code, § 3612, prescribing requirements of declaratory statement; Mares v. Dillon, 30 Mont. 132, 75 Pac. 965, upholding Pol. Code, § 3610, providing additional requirements for valid location of mining claims to those

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required by federal law; Wright v. Lyons, 45 Or. 173, 77 Pac. 83, upholding B. & C. Comp., §§ 3975, 3976, relating to marking of boundaries of mining claim. See 104 Am. St. Rep. 688, 690, notes.

Syl. 6 (X, 996). Mines—Necessity for discovery.

Approved in Bulette v. Dodge, 2 Alaska, 429, following rule; Creede etc. Milling Co. v. Uinta Tunnel etc. Co., 196 U. S. 349, 49 L. 509, 25 Sup. Ct. 266, Rev. St., § 2320, does not require discovery of vein or lode before other steps taken to perfect location; Lange v. Robinson, 148 Fed. 802, where locator of placer claims along creek washed out few pans of deposit on site of creek and found color sufficient to justify shaft, there was sufficient discovery; Redden v. Harlan, 2 Alaska, 406, where plaintiff recorded placer location but made no discovery, and eleven months later defendant recorded same ground and began shaft, latter not enjoined.

113 U. S. 537-539, 28 L. 1116, ERHARDT v. BOARO.

Syl. 1 (X, 996). Injunction irreparable injury.

Approved in Big Six Dev. Co. v. Mitchell, 138 Fed. 283, 288, upholding bill by landlord to cancel mining lease as cloud on title and to enjoin lessee from mining on leased premises because of breach of lease in operating in unworkmanlike manner; Field v. Tanner, 32 Colo. 290, 75 Pac. 920, in action for recovery of realty, one tenant in common may recover possession of entire tract as against all except cotenant; dissenting opinion in Mountain Copper Co. v. United States, 142 Fed. 648, majority refusing to enjoin lawful business as nuisance where injury would be slight and grant thereof would be oppressive.

113 U. S. 550-565, 28 L. 993, FUSSELL v. GREGG.

Syl. 1 (X, 998). Equitable relief.

Approved in Glenn v. West, 103 Va. 524, 49 S. E. 672, holder of equitable title out of possession cannot sue possessor under tax title, between whom and himself no priority exists, to quiet title; dissenting opinion in Barnes v. Newton, 5 Okl. 459, 460, 49 Pac. 1080, 1081, majority holding successful contest and before Land Department may enjoin adversary from further interfering with possession and further occupancy of premises.

Syl. 5 (X, 999). Ejectment where plaintiff has no title.

Approved in Eastern Or. Land Co. v. Brosnan, 147 Fed. 810, where public lands patented under general land laws had been previously otherwise appropriated by act of Congress, land is recoverable by time owner by action at law where he has title sufficient to support ejectment.

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113 U. S. 568-574, 28 L. 1079, BROWN v. UNITED STATES.

Syl. 1 (X, 1000). Contemporaneous statutory construction.

Approved in Avery v. Pima Co., 7 Ariz. 32, 60 Pac. 703, under Rev. St. Ariz., presenting salaries of sheriff, sheriff cannot collect extra compensation for caring for federal prisoners in county jail; Pitts v. Logan County, 3 Okl. 740, 41 Pac. 591, clerks of territorial courts must account to United States Secretary of Treasury for all fees, and territorial act regulating same is void; Mann v. Mercer County Court, 58 W. Va. 660, 52 S. E. 779, construing Code 1899, c. 114, § 2, relating to adjournments; dissenting opinion in Bates etc. Co. v. Payne, 194 U. S. 111, 48 L. 896, 24 Sup. Ct. 595, majority upholding refusal of Postmaster General to admit as second-class matter monthly musical publication, each issue of which treats of work of single musician and is complete in itself.

Distinguished in Sylvania v. Hilton, 123 Ga. 760, 107 Am. St. Rep. 165, 51 S. E. 746, 2 L. R. A. (N. S.) 483, corrugated iron building with window-frame does not comply with fire ordinance requiring buildings to be made of incombustible material, though ordinance repeatedly violated without objection by authorities.

113 U. S. 574-585, 28 L. 1084, CHICAGO LIFE INS. CO. v. NEEDLES.

Syl. 1 (X, 1001). State decision on federal question.

Approved in Mathew v. Wabash Ry. Co., 115 Mo. App. 481, 81 S. W. 648, judgment for plaintiff in action for injuries to passenger on interstate train equipped with automatic couplers as required by interstate commerce commission, which equipment increased hazard, is reviewable by United States supreme court on error.

113 U. S. 594-609, 28 L. 1093, AYERS v. WATSON.

Syl. 1 (X, 1003). Removal—Time to petition.

Approved in O'Conor v. Texas, 202 U. S. 507, 50 L. 1126, 26 Sup. Ct. 726, alien nonresident cannot remove suit; Kentucky v. Powers, 139 Fed. 485, under Rev. St., § 641, criminal prosecution is removable when, after three reversals of conviction, defendant discriminated in selection of jury and under state law rulings of trial court as to juries are not reviewable.

Syl. 2 (X, 1003). Removal—Waiver.

Approved in Groton Bridge etc. Co. v. American Bridge Co., 137 Fed. 293, 297, neither general appearance of defendant nor grant of extension of time to plead by stipulation waives right to remove.

Syl. 8 (X, 1005). Boundaries—Courses and distances.

Cited in Davis v. Commonwealth Land etc. Co., 141 Fed. 731, arguendo.

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113 U. S. 609-618, 28 L. 1106, CALIFORNIA ETC. PAVING CO. v. MOLITOR.

Syl. 3 (X, 1005). Patent infringement question of fact.

Approved in Walker etc. Bin Co. v. Miller, 146 Fed. 252, where in infringement suit patent sustained, whole question of infringement and its extent may be considered by master; Chicago Grain Door Co. v. Chicago etc. R. Co., 137 Fed. 105, where pending infringement suit defendant begins use of different infringing device, question of second infringement may be brought in by supplemental bill.

Syl. 4 (X, 1006). Patent infringement—Contempt.

Approved in General Elec. Co. v. McLaren, 140 Fed. 878, and Brookfield v. Novelty Glass Mfg. Co., 132 Fed. 317, both following rule; Heinze v. Butte etc. Min. Co., 129 Fed. 281, 63 C. C. A. 388, no judgment of contempt can be rendered where circuit judges disagree.

113 U. S. 618-629, 28 L. 1109, WINONA ETC. R. R. CO. v. BARNEY.

Syl. 1 (X, 1006). Railroad land grants.

Approved in Moon v. Salt Lake Co., 27 Utah, 444, 76 Pac. 225, construing congressional act of 1870, granting right of way through public lands to Utah Central Railroad; United States v. Choctaw etc. R. R. Co., 3 Okl. 479, 41 Pac. 754, arguendo.

Syl. 2 (X, 1006). Railroad land grants—Indemnity.

Approved in Churchill v. Choctaw Ry. Co., 4 Okl. 470, 46 Pac. 506, homesteader subsequent to railroad grant is subject to rights of railroad though line not definitely located until after entry.

113 U. S. 629-644, 28 L. 1122, KANSAS ETC. R. R. CO v. DUNMEYER.

Syl. 2 (X, 1007). Railroad land grant—Definite location.

Approved in United States v. Choctaw etc. R. R. Co., 3 Okl. 489, 41 Pac. 757, following rule; Eastern Or. L. Co. v. Brosnan, 147 Fed. 812, applying rule to grant to state to aid construction of military road.

Syl. 3 (X, 1008). Railroad land grant—Abandonment of homestead.

Approved in Southern Pac. R. R. Co. v. United States, 200 U. S. 360, 50 L. 515, 26 Sup. Ct. 298, lack of final order of confirmation of Mexican grant because of appeal from confirmation decree does not defeat contention that lands excluded from railroad grant; United States v. Oregon etc. R. Co., 143 Fed. 770, grant of 1866, to Central Pacific did not embrace land subject to homestead entry though entry relinquished prior to definite location; McMichael v.

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Murphy, 12 Okl. 160, 70 Pac. 191, one settling on tract covered by homestead entry of another is trespasser.

Syl. 4 (X, 1009). Land grant—Homestead, when attaches.

Approved in Oregon etc. R. Co. v. United States, 148 Fed. 606, following rule; McMichael v. Murphy, 197 U. S. 311, 49 L. 769, 25 Sup. Ct. 460, homestead entry valid on face, though made by one disqualified to make valid entry, prevents initiation of homestead rights by another while entry remains uncanceled or unrelinquished; United States v. Chicago etc. Ry. Co., 148 Fed. 890, where, at time of grant to Iowa to aid railroad and at time of definite location, lists of lands selected as swamp were on file with Interior Department but were subsequently disapproved, alleged swamp lands not exempt from grant; City of Guthrie v. Beamer, 3 Okl. 665, 41 Pac. 651, one claiming public lands as townsite settler acquires no vested rights as against United States until entry made at proper land office.

113 U. S. 656-659, 28 L. 1037, MAXWELL v. WILKINSON.

Syl. 1 (X, 1012). Evidence—Memoranda to refresh memory.

Distinguished in Grunberg v. United States, 145 Fed. 96, permitting partner to refresh memory from ledger entries of sales made at close of calendar month in which sale made.

113 U. S. 679-683, 28 L. 1070, BLAKE v. SAN FRANCISCO.

Syl. 3 (X, 1013). Patents—Application of old process.

Approved in O'Rourke Eng. etc. Co. v. McMullen, 150 Fed. 352, holding void Moran patent No. 500,149, claim 3, for air-lock for caissons; Daylight etc. Mfg. Co. v. American Pris. Light Co., 142 Fed. 461, holding void Cummings patent No. 695,282, for machine for making prismatic glass.

113 U. S. 684-687, 28 L. 1152, FOURTH NAT. BANK v. STOUT.

Syl. 1 (X, 1014). Appeal—Joint Judgment—Jurisdictional amount.

Approved in Feely v. Bryan, 55 W. Va. 591, 47 S. E. 309, where several creditors with separate demands attack mortgage as preference, and decree adjudges property for benefit of all insolvent's creditors, and decrees particular sums to several creditors sums cannot be added to give appellate jurisdiction.

113 U. S. 689-703, 28 L. 1089, BOYER v. BOYER.

Syl. 2 (X, 1014). Uniform taxation of national bank sales.

Approved in Ankeny v. Blakley, 44 Or. 86, 74 Pac. 488, holding assessment on national bank stock not discriminatory as compared with that assessed on other moneyed capital.

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113 U. S. 703-711, 28 L. 1145, SOON HING v. CROWLEY.

Syl. 1 (X, 1016). Regulation of business—Discrimination.

Approved in New York v. Van De Carr, 199 U. S. 563, 50 L. 311, 26 Sup. Ct. 144, upholding New York ordinance giving board of health discretion to grant or withhold permits to sell milk in city; Johnson v. Spartan Mills, 68 S. C. 356, 47 S. E. 702, upholding Code 1902, §§ 2712, 2720, making it unlawful to pay wages in evidences of indebtedness redeemable in other than lawful money and exempting agricultural contracts; Cowart v. City Council, 67 S. C. 44, 45 S. E. 125, upholding ordinance providing that lenders, except banks, loaning money on personalty should pay licenses according to schedule of gross business; dissenting opinion in Wright v. Hart, 182 N. Y. 358. 75 N. E. 414, 2 L. R. A. (N. S.) 338, majority holding void act of 1902, regulating sales of stocks of merchandise in bulk. See 108 Am. St. Rep. 789, note.

Syl. 2 (X, 1016). Police regulation—Laundry hours.

Approved in Grainger v. Douglas Park Jockey Club, 148 Fed. 521, 522, 526, upholding Kentucky act of 1906, regulating racing of running horses; Glucose Refining Co. v. City of Chicago, 138 Fed. 216, upholding Chicago smoke ordinance; City of Butte v. Paltrovich, 30 Mont. 23, 104 Am. St. Rep. 698, 75 Pac. 522, upholding ordinance regulating hours of operating pawnshops, loan offices, and second-hand stores; Wenham v. State, 65 Neb. 406, 91 N. W. 425, 58 L. R. A. 825, upholding act of 1899, regulating hours of labor of females in factories, stores, hotels, and restaurants; Ex parte Boyce, 27 Neb. 337, 75 Pac. 5, 65 L. R. A. 47, upholding act of 1903, regulating hours of labor in mines and smelters.

Syl. 3 (X, 1018). Regulation of laundry hours.

Approved in Fischer v. St. Louis, 194 U. S. 371, 48 L. 1024, 24 Sup. Ct. 673, upholding city ordinance prohibiting maintenance of dairies or cow-stables in city limits wthout permission of municipal assembly. See 99 Am. St. Rep. 623, note.

Syl. 4 (X, 1018). Motives of legislature.

Approved in Grainger v. Douglas Park Jockey Club, 148 Fed. 535, upholding Kentucky act of 1906, regulating racing of running horses; Glucose Refining Co. v. City of Chicago, 138 Fed. 217, upholding Chicago smoke ordinance; People v. Gardner, 143 Mich. 107, 106 N. W. 542, in prosecution for violating garbage ordinance, evidence showing purpose of council in passing ordinance was fraudulent and to create monopoly of garbage business was inadmissible; Tilly v. Mitchell, 121 Wis. 11, 105 Am. St. Rep. 1007, 98 N. W. 973, under Laws 1891, p. 199, § 54, giving council power to vacate streets, courts cannot inquire into motives of councilmen in vacating part of street for private use where action is not fraudulent.

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113 U. S. 713-727, 28 L. 1117, EX PARTE FISK.

Syl. 1 (X, 1019). Conformity to state practice.

Approved in Swift v. Jones, 145 Fed. 492, circuit judge cannot in law action, order trial before special master authorized to hear and pass on issues of fact and report findings to court; Low Foon Yin v. United States Im. Commr., 145 Fed. 796, arguendo.

Syl. 2 (X, 1020). Examination of witness prior to trial.

Approved in Hanks Dental Assn. v. International Tooth Crown Co., 194 U. S. 305, 307, 310, 48 L. 989, 991, 992, 24 Sup. Ct. 700, following rule; Diamond Coal & Coke Co. v. Allen, 137 Fed. 706, testimony of absent witness on former trial of same case cannot be read in evidence.

Distinguished in Toledo Traction Co. v. Cameron, 137 Fed. 59, 69 C. C. A. 28, admitting testimony of absent witness given on former trial of same case as authorized by Ohio statute.

Syl. 4 (X, 1020). Removal—Examination of adversary prior to trial.

Approved in Bryant Bros. Co. v. Robinson, 149 Fed. 328, demurrer to bill not accompanied by certificate of counsel that it is well founded nor supported by defendant's affidavit that it was not interposed for delay is defective; Importers' etc. Bank v. Lyons, 134 Fed. 511, depositions may be taken to be used on hearing of rule to show cause.

Distinguished in Blood v. Morrin, 140 Fed. 919, 920, plaintiff in federal court who is citizen of another state and resides more than one hundred miles from place of trial may be compelled to give deposition de bene esse prior to trial.

Syl. 5 (X, 1021). Habeas corpus—Contempt of void order.

Approved in United States v. Atchison etc. Ry. Co., 142 Fed. 182, denying jurisdiction to enjoin railroad from granting rebates; American Lighting Co. v. Public Service Corp., 134 Fed. 131, denying right to punish for contempt in disregarding restraining order in case for which there is adequate remedy at law; Cuyler v. Atlantic etc. R. Co., 131 Fed. 99, releasing on habeas corpus newspaper publisher imprisoned for contempt consisting of editorial criticising official conduct of court; State v. McGahey, 12 N. D. 547, 97 N. W. 869, affidavit on information and belief and not otherwise corroborated confers no jurisdiction to issue search-warrant under Codes 1899, § 7605.

(X, 1019.) Miscellaneous. Cited in Bessette v. W. B. Conkey Co., 194 U. S. 333, 48 L. 1004, 24 Sup. Ct. 665, judgment of circuit court finding one not party to suit guilty of contempt for violation of restraining order, and imposing fine therefor, is reviewable on error by circuit court of appeals.

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113 U. S. 727-737, 28 L. 1137, COOPER MFG. CO. v. FERGUSON.

Syl. 2 (X, 1021). Regulation of foreign corporations.

Approved in Black v. Vermont Marble Co., 1 Cal. App. 719, 82 Pac. 1061, under Stat. 1899, p. 111, relating to designation by foreign corporations of agents for service of process, does not permit foreign corporation not filing designation till after suit to plead limitations as defense; Commonwealth v. Read Phosphate Co., 113 Ky. 38, 67 S. W. 46, upholding Ky. St., § 571, requiring corporations except foreign insurance companies to file statement with Secretary of State giving location of office and name of agent on whom process can be served; Metropolitan Life Ins. Co. v. Board of Assessors, 115 La. 706, 39 So. 849, arguendo.

Syl. 2 (X, 1022). Contemporaneous legislative construction.

Approved in State v. New Orleans Ry. & Light. Co., 116 La. 148, 40 So. 598, electric light company is not "manufacturer" within exemption clause of Const. 1898, art. 229, authorizing legislature to impose license taxes; Henry v. State, 87 Miss. 57, 59, 39 So. 871, 872, upholding Rev. Code, 1892, § 3201, providing for working convicts on farm leased for that purpose; Higgins v. Tax Assessors of Pawtucket, 27 R. I. 409, 63 Atl. 37, upholding Practice Act 1905, p. 4, § 12, giving superior courts jurisdiction of certain extraordinary writs.

Syl. 4 (X, 1022). Foreign corporations—Filing of articles.

Approved in Kirven v. Virginia etc. Chemical Co., 145 Fed. 293, 294, where foreign corporation which sold and shipped goods to resident of South Carolina on local agent's order taken subject to its approval had not complied with state statute authorizing it to do business in state, but did so before suit it may recover price; Ammons v. Brunswick etc. Co., 141 Fed. 575, 576, 578, under act of 1901, regulating business of foreign corporations in Indian Territory, foreign corporation which in single instance completed executory sale by delivery of property and took mortgage for price through agent is not "doing business"; Babbitt v. Field, 6 Ariz. 12, 52 Pac. 776, applying rule under Rev. St., tit. 12, c. 7; Jameson v. Simmonds Saw Co., 2 Cal. App. 585, 84 Pac. 290, firm which purchases goods of foreign corporation on mail orders and which resells goods is not agent of corporation within Code Civ. Proc., § 411, authorizing service on agent, though firm designated itself as agent on letterheads; Deere Plow Co. v. Wyland, 69 Kan. 258, 76 Pac. 864, determining whether single transaction by foreign corporation was doing business in state within Gen. St. 1901, § 1283, relating to foreign corporations; Gemundt v. Shipley, 98 Md. 662, 57 Atl. 13, where nonresident of county owned property which he managed and also collected rents on property owned as cotenant, for which he received commission and had house in county in which he formerly lived and used it as office when in county, he was not engaged in regular business within Code, § 132, authorizing suit in county where

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business carried on; Booth v. Weigand, 28 Utah, 387, 389, 79 Pac. 573, under Rev. St. 1898, § 351, contracts of foreign corporation made while doing business in state without complying with such statute are invalid and unenforceable by corporation; Keene Guaranty Sav. Bank v. Lawrence, 32 Wash. 578, 73 Pac. 682, where only business of foreign corporation in state was purchase of mortgage, which was sent to its banker in state of its residence, it is not subject to laws prohibiting foreign corporations from doing business without license.

Syl. 5 (X, 1023). Limitations on foreign corporations.

Approved in Belle City Mfg. Co. v. Frizzell, 11 Idaho, 8, 81 Pac. 59, following rule; Attorney General v. Electric etc. Battery Co., 188 Mass. 240, 74 N. E. 467, upholding Stat. 1903, requiring foreign corporations to file certain certificate and to pay excise tax on capital stock, is valid as to corporation engaged in interstate commerce; Greek-American Sponge Co. v. Richardson etc. Co., 124 Wis. 476, 102 N. W. 891, sale by foreign corporation of goods sent to local agent for delivery to and inspection by purchaser is enforceable by corporation though it has not filed articles as required by law.

Distinguished in United States Rubber Co. v. Butler Bros. Shoe Co., 132 Fed. 399, foreign corporation which has established place of business in Colorado, where goods are sold by factor, is doing business in state within Colo. Act 1901, § 10, though goods bought from other state.

Syl. 6 (X, 1023). Contract of foreign corporation not filing articles.

Approved in Iowa etc. Min. Co. v. United States etc. Guaranty Co., 146 Fed. 439, contract by foreign corporation which has not complied with Iowa Code 1897, § 1637, is not void.

113 U. S. 756-768, 28 L. 1141, HARDIN v. BOYD.

Syl. 1 (X, 1025). Amendment of equity pleading.

Approved in Ratliff v. Sommers, 55 W. Va. 37, 46 S. E. 715, applying rule in suit for specific performance of parol contract to purchase land.

Syl. 2 (X, 1026). Equity—Amendment making new case.

Approved in Jones v. Missouri etc. Elec. Co., 144 Fed. 779, minority stockholder may in one suit recover value of stock and repudiate contract of consolidation of corporation; Fourth Nat. Bank v. Camden Lumber Co., 142 Fed. 260, omission of seal from mortgage made by business corporation is not fatal to its validity under Arkansas law.

Distinguished in Cella v. Brown, 144 Fed. 754, where bill discloses fact that complainant seeks relief based on recognition of validity of transaction, which he seeks to specifically enforce, he cannot pray for amendment of transaction as fraudulent.

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Syl. 3 (X, 1026). Purchase-money lien—Limitations.

Approved in Conway v. Caswell, 121 Ga. 257, 48 S. E. 958, where insurance policy transferred as security for debt, fact that remedy on latter barred does not prevent holder of collateral from enforcing rights thereunder.

CXIV UNITED STATES.

114 U. S. 1-14, 29 L. 76, THOMPSON v. BOISSELIER.

Syl. 2 (X, 1028). Shape or form not patentable.

Approved in Voightmann v. Weis etc. Co., 133 Fed. 303, Voightmann patent No. 600,186 for improvement in fireproof windows, is void for lack of invention and also for being mere aggregations.

114 U. S. 15-47, 29 L. 47, MURPHY v. RAMSEY.

Syl. 5 (X, 1030). Power of Congress over territories.

Approved in United States v. Winans, 198 U. S. 383, 49 L. 1093, 25 Sup. Ct. 662, fishing rights in Columbia river secured to Yakima Indians by treaty of 1859 are not subordinate to powers acquired by state of Washington over shore lands, on its admission into the Union; Kepner v. United States, 195 U. S. 125, 49 L. 122, 24 Sup. Ct. 797, right of government to appeal from judgment of acquittal under military order No. 58 as amended by Act of Philippine Commission August, 1901, was taken away by section 5, Act of Congress July 1, 1902; Allen v. Reed, 10 Okl. 111, 60 Pac. 784, chapter 23 of Statutes of 1893, relating to changing of county seats is inconsistent with sections 10 and 14 of Act of Congress March 3, 1893, providing for opening of Cherokee Outlet to settlement; Goodson v. United States, 7 Okl. 137, 54 Pac. 429, district courts of Oklahoma, when exercising jurisdiction of United States court, have exclusive jurisdiction of all crimes punishable by law of United States when committed by persons other than Indians, or when committed by Indians on reservations, except certain excepted crimes; Kneeland v. Korter, 40 Wash. 363, 82 Pac. 609, 1 L. R. A. (N. S.) 745, prior to admission of state into Union, Congress has power to grant tide lands lying between high and low water-mark within its boundaries.

114 U. S. 47-51, 29 L. 61, BOHALL v. DILLA.

Syl. 2 (X, 1031). Public lands—Title of claimant.

Approved in Paine v. Foster, 9 Okl. 232, 262, 53 Pac. 115, 60 Pac. 25, reaffirming rule; Smith v. Love, 49 Fla. 241, 38 So. 380, facts alleged in plea are held sufficient if maintained by proofs to constitute plaintiff trustee of legal title for defendant; Gebo v. Clarke Fork C. Min. Co., 30 Mont. 91, 75 Pac. 860, complaint to hold patentee

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of public land a trustee thereof does not state a cause of action when it does not appear that plaintiff did not make a voluntary relinquishment; Cagle v. Dunham, 14 Okl. 615, 78 Pac. 562, decision rendered by Land Department after due notice and hearing will not be set aside by court of equity upon allegations that perjury was committed before Land Department; Baldwin v. Keith, 13 Okl. 630, 75 Pac. 1126, it is within discretion of Secretary of Interior to deny application to make homestead entry made by person who has no equities in land when land is covered by Indian allotment and injustice would be done by canceling allotment; Parker v. Lynch, 7 Okl. 660, 56 Pac. 1091, offering to file contest against homestead entry gives party no interest in land, and after contest rejected he cannot maintain action against entryman to declare trustee for his benefit; Thornton v. Peery, 7 Okl. 448, 54 Pac. 651, allegation in petition that prevailing party in land office introduced perjured testimony will not authorize court to set aside the findings unless there are allegations that no other testimony was introduced.

Syl. 3 (X, 1032). Showing by pre-emptor.

Approved in Small v. Rakestraw, 196 U. S. 406, 49 L. 529, 25 Sup. Ct. 285, finding by Secretary of Interior that residence of homestead entryman for voting purposes was in another precinct from that where land lies is not erroneous where entryman, after entry, voted in another county and secretary may have had other testimony. See 104 Am. St. Rep. 697, note.

Syl. 4 (X, 1032). Absence of pre-emptor.

Approved in Bertwell v. Haines, 10 Okl. 475, 63 Pac. 704, where one claiming right to tract of government land settled thereon and improved it, short absence for purpose of bringing his family was not an abandonment.

114 U. S. 52-57, 29 L. 63, LOUISVILLE ETC. R. R. v. IDE.

Syl. 1 (X, 1032). Removal of causes—Joint contract.

Approved in Manufacturers' Com. Co. v. Brown Alaska Co., 148 Fed. 310, contracts of maker and several indorsers on promissory note are separate from the others, and may be removed by any defendant who would have the right if sued alone; Iowa etc. Min. Co. v. Bliss, 144 Fed. 452, where plaintiff, an alien, sued defendant guaranty company, a nonresident, on fidelity bond, in which only obligation of principal was to hold guaranty company harmless, and in same action plaintiff sought to hold principal liable for embezzlement, controversy between plaintiff and guaranty company was separable from that between it and principal on bond; Lucas v. Milliken, 139 Fed. 825, bill for specific performance of contract for sale of stock of corporation and to recover damages which does not allege insolvency of other party to contract does not state cause of action against corporation which is not necessary party, and its joinder will

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not defeat right of real defendant to removal; Cella v. Brown, 136 Fed. 443, in action for specific performance to compel defendant to convey certain securities, where it was alleged that bank made payments for complainant and claimed stock pledged, and complainant was willing to reimburse bank, the bank was not necessary party; Boatmen's Bank v. Fritzlin, 135 Fed. 661, 662, 68 C. C. A. 288, holder of prior mortgage or lien is not necessary party to foreclosure of junior mortgage; Lathrop etc. Co. v. Pittsburg etc. R. Co., 135 Fed. 620, where, in complaint against railroad and construction company for services between plaintiff and latter, citizenship of construction was diverse, and plaintiff alleged in single cause of action that he performed services for railroad company, and construction company was agent, complaint did not show separate cause of action; Miller v. Clifford, 133 Fed. 884, 67 C. C. A. 52, in suit in equity brought in state court on behalf of all creditors of insolvent bank against member of stockholders to enforce their liability, there is no separate controversy; Vulcan Detinning Co. v. American Can Co., 130 Fed. 637, bill seeking to enjoin principal defendants from practicing secret process alleged to be owned by complainant, and to restrain another defendant from assisting them, does not present separate controversy which gives latter defendant right of removal.

Syl. 2 (X, 1034). Joint actions—Option of plaintiff.

Approved in Alabama etc. Ry. Co. v. Thompson, 200 U. S. 216, 50 L. 446, 447, 26 Sup. Ct. 161, where plaintiff has elected to sue jointly in tort foreign corporation and its servants, who caused the injury, separable controversy arises; City of Cleveland v. Cleveland etc. Ry. Co., 147 Fed. 176, plaintiff had right to join lessee in possession with lessor, and conclude both in one suit; Thomas v. Great Northern Ry. Co., 147 Fed. 85, under Washington statute servant may be joined with master in an action by another servant for personal injuries alleged to have resulted from their negligence; Iowa etc. Min. Co. v. Bliss, 144 Fed. 454, bond signed by employee and bonding company is not joint obligation.

114 U. S. 57-60, 29 L. 65, PUTNAM v. INGRAHAM.

Syl. 1 (X, 1034). Removal of causes—Separable controversies.

Approved in Vulcan Detinning Co. v. American Can Co., 130 Fed. 637, bill which seeks to enjoin principal defendants from practicing secret process owned by complainant, learned through employee of complainant, does not present a separate controversy.

114 U. S. 60-62, 29 L. 66, ST. LOUIS ETC. RY. v. WILSON.

Syl. 1 (X, 1035). Removal of causes—Single cause.

Approved in Lucas v. Milliken, 139 Fed. 823, bill for specific performance of contract for sale of stock of corporation which does not allege insolvency of other contracting party nor that he is about to dispose of stock does not state a cause of action against company.

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114 U. S. 63-86, 29 L. 67, SARGENT v. HULL SAFE ETC. CO.

Syl. 1 (X, 1036). Infringement of patents.

Approved in Universal Brush Co. v. Sonn, 146 Fed. 531, Morrison patent No. 717,014, claim 1, for method of making brushes, infringed by Sonn patent No. 791,510; Westinghouse etc. Co. v. Cutter etc. Co., 136 Fed. 221, Wright and Aalborg patent No. 633,772, for automatic electric circuit breaker not infringed; Rembert etc. Co. v. American Cotton Co., 129 Fed. 369, 64 C. C. A. 25, Rembert patent No. 441,022, for method of baling cotton, not infringed by Graves patent No. 473,144.

114 U. S. 87-103, 29 L. 96, ELECTRIC SIGNAL CO. v. HALL SIGNAL CO.

Syl. 1 (X, 1037). Infringement of patents.

Approved in Imperial Bottle Cap etc. Co. v. Crown Cork etc. Co., 139 Fed. 323, Painter patent No. 468,258, for bottle-stopper, not infringed by Abbott patent No. 704,167.

114 U. S. 104-120, 29 L. 105, THOMPSON v. WOOSTER.

Syl. 1 (X, 1037). Effect of decree pro confesso.

Approved in North Chicago St. R. Co. v. Chicago Union Tr. Co., 150 Fed. 630, under federal practice in equity, after answering original bill, defendant is entitled to plead only to new matter introduced by amendment; Third Nat. Bank v. Atlantic City, 130 Fed. 754, 65 C. C. A. 177, where bill to establish complainant's right to a fund set out grounds and alleged priority, decree rendered pro confesso as to certain defendants became conclusive after the term; Junge v. MacKnight, 137 N. C. 287, 49 S. E. 474, in action under Laws 1893, p. 37, c. 6, to determine conflicting claims to real property, failure of defendant to answer at return term entitled plaintiff to judgment by default final; dissenting opinion in Junge v. MacKnight, 135 N. C. 113, 47 S. E. 455, majority holding that default final may be rendered at return day only in cases provided for in Code, 385, and in action to remove cloud on title, rendition of it at such time is irregular.

Syl. 2 (X, 1038). Bills pro confesso—English practice.

Approved in Brown v. Fletcher, 140 Fed. 641, Rev. St., § 955, providing for revival of suits which have abated by death of party applies only to actions at law; United States v. Howard, 132 Fed. 332, under Rev. St., § 1025, relating to indictments, crime of subornation of perjury will be sufficiently pleaded if proper averments appear in any form; Lyle v. Winn, 45 Fla. 423, 34 So. 159, where bill to foreclose mortgage did not ask for attorneys' fees, and neither mortgage nor note contained any stipulation therefor, it was error to insert amount of fee in decree pro confesso.

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114 U. S. 127, 128, 29 L. 117, MOWER v. FLETCHER.

Syl. 1 (X, 1040). Final judgment.

Approved in Schlosser v. Hemphill, 198 U. S. 176, 49 L. 1003, 25 Sup. Ct. 654, judgment of highest state court reversing decree of trial court in equity case is not final and will not sustain writ of error from supreme court of United States.

114 U. S. 138-146, 29 L. 114, FARMINGTON v. PILLSBURY.

Syl. 1 (X, 1042). Jurisdiction—Act of 1875.

Approved in Steigleder v. McQuesten, 198 U. S. 142, 49 L. 987, 25 Sup. Ct. 616, question of jurisdiction of federal circuit court on ground of diversity of citizenship may be raised on motion to dismiss; Briggs v. Traders' Co., 145 Fed. 257, where suit is brought in circuit court to wind up affairs of a corporation, and the court has no jurisdiction, the objection under U. S. Comp. St. 1901, p. 511, may be made at any time without any pleading; Pennsylvania Co. v. Bay, 138 Fed. 205, where bill in federal court to enjoin business of buying and selling nontransferable railroad tickets alleged that value of business sought to be protected amounted to $5,000, such amount is considered as true for purpose of sustaining jurisdiction.

Syl. 2 (X, 1042). Negotiable paper—Removal of causes.

Approved in Kreider v. Cole, 149 Fed. 654, where persons interested in Pennsylvania corporation for purpose of bringing suit in federal court therein for receiver assigned stock and bonds to citizen of New Jersey, such assignment defeated jurisdiction; Kirven v. Virginia-Carolina Chemical Co., 145 Fed. 291, original beneficial owner may sue in federal court on note, although nominal payee by reason of citizenship could not sue therein; Woodside v. Vasey, 142 Fed. 618, circuit court is without jurisdiction of action against directors of corporation to enforce payment of number of claims, all but one of which was assigned to plaintiff for purpose of suing therein; Turnbull v. Ross, 141 Fed. 652, suit was properly dismissed where it appeared from the evidence that property involved was collusively transferred to plaintiff, who was citizen of another state for purpose of jurisdiction.

114 U. S. 149-158, 29 L. 58, STEPHENSON v. BROOKLYN R. R.

Syl. 2 (X, 1043). Patents—Combinations.

Approved in Capewell v. Goldsmith, 138 Fed. 685, Capewell patent No. 630,972, for stick-pin retainer, is void for lack of patentable invention.

114 U. S. 158-173, 29 L. 83, CHAPMAN v. BREWER.

Syl. 2 (X, 1044). Effect of adjudication in bankruptcy.

Approved in Silvey v. Tift, 123 Ga. 808, 51 S. E. 750, 1 L. R. A. (N. S.) 386, where creditors file petition to have debtor adjudged

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bankrupt, alleging preference to a firm, adjudication in bankruptcy is conclusive in action by trustee against said firm.

Syl. 3 (X, 1044). Circuit court—State relief.

Approved in Douglas etc. Club v. Granger, 146 Fed. 419, suit to enjoin officers of state from exercising power conferred by statute on ground that their action is unconstitutional, is within federal jurisdiction; Ames etc. Co. v. Big Indian etc. Co., 146 Fed. 175, federal court having jurisdiction will enforce Civ. Code Mont., § 1891, providing that in actions for protection of water rights plaintiff may make parties all who divert water from stream; In re Mertens, 131 Fed. 515, under Bankr. Act July 1, 1898, c. 541, § 2, subs. 2, 30 Stat. 545, as amended, bankruptcy court has jurisdiction to try and determine title to property found in possession of bankrupt purchased by him.

114 U. S. 176-189, 29 L. 121, CHESAPEAKE ETC. RY. v. MILLER.

Syl. 1 (X, 1046). Immunity from taxation—Assignee.

Approved in Wicomico Co. Commrs. v. Bancroft, 135 Fed. 981, under Code Md. 1888, art. 23, §§ 187, 188, providing for rights of new corporation purchasing railroad under foreclosure, an exemption from taxation for a term of years enjoyed by the old company passes to the new one; Baltimore etc. Ry. Co. v. Wicomico Co., 103 Md. 280, 63 Atl. 679, under Acts 1886, p. 209, c. 133, granting railroad company exemption from taxation, purchaser under foreclosure sale was not entitled to exemption; Rochester v. Rochester Ry. Co., 182 N. Y. 118, 74 N. E. 953, 70 L. R. A. 773, where street railway company was exempt from expense of repaving between tracks, the right did not pass to lessee, it being personal under Laws 1869, p. 54, c. 34; Lake Drummond Canal Co. v. Commonwealth, 103 Va. 350, 49 S. E. 510, under Code 1887, § 1233, providing for sale of corporation property under foreclosure, such sale does not confer upon purchaser immunity from taxation granted to original corporation and its successors and assigns.

Syl. 2 (X, 1047). Taxation of franchises.

Approved in Baltimore etc. Ry. Co. v. Wicomico Co., 103 Md. 285, 63 Atl. 681, where purchaser of railroad under foreclosure possesses immunity from taxation enjoyed by mortgagor, such exemption was recalled by general assessment law.

114 U. S. 190-195, 29 L. 132, LITCHFIELD v. BALLOU.

Syl. 1 (X, 1048). Bill in equity.

Approved in Southern Pac. R. Co. v. United States, 133 Fed. 657, 658, 66 C. C. A. 581, court of equity has jurisdiction of suit by government against railroad company to determine what proportion of lands erroneously patented to company have been sold to bona fide purchasers and for cancellation of patent to lands not disposed of;

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General Elec. Co. v. Westinghouse Elec. & Mfg. Co., 144 Fed. 466, where contract for manufacture of electric equipment provided for liquidated damages for violation thereof, complainant was not entitled to injunction to restrain defendant's violation.

Distinguished in Southern Pac. R. Co. v. United States, 133 Fed. 655, 66 C. C. A. 581, where bill presents case over which court of equity has jurisdiction of subject matter, objection that there is remedy at law must be taken at earliest opportunity.

Syl. 2 (X, 1048). Limitation on municipal indebtedness.

Approved in Southern Pac. R. R. Co. v. United States, 200 U. S. 349, 50 L. 510, 26 Sup. Ct. 296, where bill in equity avers that certain public lands were erroneously patented to railroad company, and prays for discovery of any sales to bona fide purchasers and recovery of value of lands sold, objection that complainant had remedy at law comes too late when made at hearing; Reynolds v. Lyon County, 121 Iowa, 736, 96 N. W. 1097, holding void refunding bonds to pay outstanding bonds where county debt limit exceeded thereby; City of Guthrie v. New Vienna Bank, 4 Okl. 211, 38 Pac. 10, chapter 14, St. Okl., imposing provisional debts of Guthrie, East Guthrie, Capitol Hill and West Guthrie upon Guthrie, is void for conflict with statute fixing maximum rate of taxation.

Syl. 3 (X, 1049). Lien—Excessive municipal indebtedness.

Approved in Board of County Commrs. etc. v. Gillett, 9 Okl. 598, 60 Pac. 278, in action upon warrant issued by county in payment of salary of county clerk, it is good defense that at time services were rendered indebtedness of county was above maximum limit fixed by law; City of Guthrie v. New Vienna Bk., 4 Okl. 219, 38 Pac. 12, act of Congress fixing standard of validity of indebtedness for city of Guthrie, persons dealing with that city do so at their peril; Martin v. Territory, 5 Okl. 194, 48 Pac. 108, under § 4, c. 818, 24 Stat. 171, providing for maximum rate of taxation of municipalities in territories, legislature has no power to require city to pay debts in excess thereof.

Syl. 4 (X, 1049). Holders of illegal bonds.

Approved in Chelsea Sav. Bank v. City of Ironwood, 130 Fed. 412, 66 C. C. A. 230, where city issued bonds which were subsequently adjudged invalid, and sold them, holder thereof could maintain action against city to recover the purchase price paid.

114 U. S. 196-218, 29 L. 158, GLOUCESTER FERRY CO. v. PENNSYLVANIA.

Syl. 2 (X, 1050). Interstate commerce defined.

Approved in Howard v. Illinois C. R. Co., 148 Fed. 1000, liability of common carrier to its employees for personal injuries is not commerce, and regulation of such liability is not within power of Con-

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gress; Globe Elevator Co. v. Andrew, 144 Fed. 882, Laws Wis. 1905, p. 37, c. 19, as amended by Laws Sp. Sess. 1905, p. 19, c. 12, providing for inspection, etc., of grain at Superior, as applied to interstate shipments, is unconstitutional; Belle City etc. Co. v. Frizzell, 11 Idaho, 8, 81 Pac. 59, foreign corporation manufacturing farm machinery in one state and selling same to citizens of another state upon orders to be approved by it taken by local agent, does not come within provisions of § 2653, Rev. St. 1887; State v. Faudre, 54 W. Va. 123, 102 Am. St. Rep. 927, 46 S. E. 269, 63 L. R. A. 877, state of Ohio has right to establish ferries on Ohio side of Ohio river and to fix charges for ferriage from Ohio to West Virginia; dissenting opinion in Northern Securities Co. v. United States, 193 U. S. 385, 48 L. 720, 24 Sup. Ct. 436, majority holding combination by stockholders in two competing interstate railway companies to form stockholding corporation which should acquire, in exchange for its own capital stock, controlling interest of such companies, violates anti-trust act July 2, 1890.

Syl. 3 (X, 1051). Power of Congress over commerce.

Approved in Brooks v. Southern Pac. Co., 148 Fed. 991, Act June 11, 1906, c. 3073, 34 Stat. 232, treating of liability of interstate common carriers for injuries to employees through negligence of its officers and agents is unconstitutional; dissenting opinion in Northern Securities Co. v. United States, 193 U. S. 393, 48 L. 723, 24 Sup. Ct. 436, majority holding Congress had power under federal constitution to enact anti-trust act of July 2, 1890, declaring illegal every combination in restraint of interstate commerce.

Syl. 4 (X, 1051). Commerce—Rights of state.

Approved in People v. Reardon, 184 N. Y. 455, 112 Am. St. Rep. 644, 77 N. E. 978, upholding Laws 1905, pp. 474, 477, c. 241, §§ 315, 324, imposing tax upon transfers of corporate stock.

Syl. 8 (X, 1054). Taxation—Home port of vessel.

Approved in Old Dominion S. S. Co. v. Virginia, 198 U. S. 305, 49 L. 1062, 25 Sup. Ct. 686, vessels which, though engaged in interstate commerce, are employed wholly within state, are taxable in that state though registered under Rev. St. U. S.; Olson v. San Francisco, 148 Cal. 83, 82 Pac. 852, under § 4141, Rev. St. U. S., vessel is taxable at San Francisco, her "home port," although temporarily registered in state of Washington; Harrell v. Speed, 113 Tenn. 228, 106 Am. St. Rep. 814, 81 S. W. 841, under Act Cong. August 8, 1890, c. 728, 26 Stat. 313, providing for taxation, laws of state shall apply to liquor arriving in state, one running a bar on vessel belonging in Arkansas and plying between Arkansas and Tennessee, is subject to laws of Tennessee while vessel is at landing therein.

Syl. 10 (X, 1055). Exemption from state taxation.

Approved in Attorney General v. Electric etc. Battery Co., 188 Mass. 240, 74 N. E. 467, Stat. 1903, pp. 447, 450, c. 437, §§ 66, 67, 75,

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requiring foreign corporations described in § 58 to pay excise tax assessed on its capital stock, is constitutional; State v. Western Union Tel. Co., 96 Minn. 24, 104 N. W. 572, Laws 1891, p. 70, c. 8, amended by c. 180, p. 251, Laws 1901, providing for taxation of property of telegraph companies within state as a system is constitutional.

114 U. S. 218-223, 29 L. 94, LAMAR v. MICOU.

Syl. 3 (X, 1055). Residence of infant.

Approved in Young v. Hiner, 72 Ark. 303, 79 S. W. 1063, infant's domicile is that of deceased father, and cannot be changed by infant during minority; Hayslip v. Gillis, 123 Ga. 266, 51 S. E. 326, where one without authority took infant child from county of domicile to another county, where third person took it into her family, the ordinary of latter county, in absence of any choice by minor, had no jurisdiction to appoint guardian; Hering v. Mosher, 144 Mich. 155, 107 N. W. 918, where father left minor son in one county in custody of grandfather and removed to another county, where he died, domicile of child was county where he resided and not where father died.

Syl. 4 (X, 1056). Federal courts—Judicial notice.

See 113 Am. St. Rep. 874, note.

(X, 1055.) Miscellaneous. Cited in Holmes v. Derrig, 127 Iowa, 629, 103 N. W. 975, where, on death of widow mother, she committed care of child to her parents, court was not justified in awarding custody to uncle because said grandparents were not financially as able as uncle to care for child.

114 U. S. 224-233, 29 L. 101, XENIA BANK v. STEWART.

Syl. 1 (X, 1056). Declarations of agents.

Approved in Hupfer v. National Distilling Co., 119 Wis. 425, 96 N. W. 811, in action for killing plaintiff's intestate by bursting of vat, evidence that superintendent pointed out to a photographer the hoops that surrounded the vat is admissible to identify the hoops.

Syl. 4 (X, 1057). Proof of insolvency.

Approved in Bryan v. United States, 133 Fed. 501, 66 C. C. A. 369, in prosecution for uttering counterfeit 5-cent pieces, where counterfeit 5-cent pieces were found in defendant's possession, evidence that molds for making counterfeit 25-cent pieces were found in tool-chest used by defendant and another was admissible; East Tennessee etc. R. R. Co. v. Lindamood, 111 Tenn. 474, 78 S. W. 103, jury could not infer negligence of railroad company from proof that where employee attempted to set brake it gave sudden lurch, which loosened his hold so that he fell.

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114 U. S. 233-244, 29 L. 110, UNITED STATES v. MINOR.

Syl. 3 (X, 1057). Vacating land patents.

Approved in Lynch v. United States, 13 Okl. 145, 73 Pac. 1096, where patent has been issued to homestead entryman for townsite purposes and land has been duly platted into lots, etc., and large number of lots have been sold to innocent purchasers, although patentee obtained title through fraud, patent cannot be canceled, and government is without remedy. See 101 Am. St. Rep. 170, note.

Syl. 5 (X, 1058). Effect of Land Department decision.

Approved in Estes v. Timmons, 199 U. S. 396, 50 L. 244, 26 Sup. Ct. 85, perjury on hearing before Land Department of contest over entry under homestead law is not ground for equitable relief against decision of department.

114 U. S. 252-262, 29 L. 126, BISSELL v. FOSS.

Syl. 3 (X, 1060). Mining partnership.

Approved in Reed v. Munn, 148 Fed. 759, lessee has right to purchase landlord's title at execution sale and put an end to relation of landlord and tenant.

114 U. S. 270-306, 29 L. 185, POINDEXTER v. GREENHOW.

Syl. 1 (X, 1061). Payment of taxes—Bond coupons.

Approved in Leet v. Armbuster, 143 Cal. 670, 77 Pac. 655, tender of redemption money to purchaser at foreclosure sale operates to defeat estate of purchaser and leaves it in mortgagor or his successor.

Syl. 2 (X, 1062). Effect of tender—Coupons.

Approved in Bourquin v. Bourquin, 120 Ga. 120, 47 S. E. 641, where pending action in ejectment property sued for was sold for taxes and purchased by defendant, plaintiff by making tender under Pol. Code, § 909, was entitled to redeem.

Syl. 5 (X, 1062). State—Immunity from suit.

Approved in United States v. Ju Toy, 198 U. S. 263, 49 L. 1044, 25 Sup. Ct. 644, 28 Stat. at L. 372, 390, c. 301, U. S. Comp. St. 1901, p. 1303, § 1, relating to exclusion of Chinese, is not unconstitutional; Rosenberger v. Harris, 136 Fed. 1003, under Rev. St., § 3929, as amended by Act Cong. Sept. 19, 1890, c. 908, 26 Stat. 466, authorizing postmaster general to issue fraud orders, he has authority to pass on facts but not on questions of law. See 108 Am. St. Rep. 832, 840, 101 Am. St. Rep. 162, notes.

Syl. 6 (X, 1064). Suit against state—Test.

Approved in Southern Ry. Co. v. Greensboro etc. Co., 134 Fed. 93, suit against state corporation commissioner to enjoin enforcement of order alleged to be void as interference with interstate commerce is not against state. See 108 Am. St. Rep. 838, note.

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Syl. 13 (X, 1064). Statute valid in part.

Approved in Brooks v. Southern Pac. Co., 148 Fed. 996, Act June 11, 1906, c. 3073, 34 Stat. 232, relating to liability of common carriers for negligence of its agents, servants, etc., is unconstitutional because it applies to citizens of same state; Cella Com. Co. v. Bohlinger, 147 Fed. 423, Act of Ark. Feb. 26, 1901, Kirby's Dig., § 835, authorizing personal judgment against foreign corporations after service of summons on auditor of state, is void; State v. Cudahy Packing Co., 33 Mont. 189, 82 Pac. 836, Pen. Code, § 321, prohibiting combinations for purpose of fixing price of any article, etc., is, by reason of § 325, exempting persons engaged in horticulture or agriculture, void.

114 U. S. 309, 310, 29 L. 198, CHAFFIN v. TAYLOR.

Syl. 1 (X, 1065). Following Poindexter v. Greenhow.

Approved in O'Reilly De Camara v. Brooke, 135 Fed. 388, military governor of Cuba representing the United States during temporary occupancy of the island is not exempt from personal liability for tort committed in his official capacity.

114 U. S. 311-317, 29 L. 200, ALLEN v. BALTIMORE ETC. R. R.

Syl. 2 (X, 1066). Payment of taxes—Bond coupons.

Approved in Southern Ry. Co. v. Greensboro etc. Co., 134 Fed. 93, North Carolina corporation commission is agent of state and may be enjoined by federal court.

Syl. 2 (X, 1066). Injunction restraining collection of taxes.

See 108 Am. St. Rep. 838, note.

114 U. S. 317-323, 29 L. 202, CARTER v. GREENHOW.

Syl. 2 (X, 1067). Contract with state—Testing validity.

Approved in O'Reilly De Camara v. Brooke, 135 Fed. 388, if officer of United States takes property of private person for public use without compensation, he is liable in tort, although government is also liable.

114 U. S. 340-355, 29 L. 136, EAST ALABAMA RY. v. DOE.

Syl. 1 (X, 1069). Assignee of railroad.

Approved in Oregon etc. R. R. Co. v. Quigley, 10 Idaho, 785, 80 Pac. 405, Utah and Northern Railway Company having become grantee of right of way on certain land under Act Cong. March 3, 1873, c. 291, 17 Stat. 612, settlers could not thereafter acquire title by adverse possession to part of land included in grant to railway company; Dobbins v. Colorado etc. Ry. Co., 19 Colo. App. 261, 75 Pac. 157, where law provides for assessment of taxes against railroads making them, a lien on section within the county, the ordinary remedy of proceeding in equity to enforce the lien is proper.

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Syl. 2 (X, 1069). Construction of state laws.

Approved in Board of Commrs. v. Tollman, 145 Fed. 763, under Const. N. C., art. 2, § 14, providing that no county tax law shall be passed unless bill for that purpose shall be read three times and vote entered on record, journal showing "Ayes 94, nays ——, total ——," shows there were no negative votes cast.

114 U. S. 355-373, 29 L. 152, THE BELGENLAND.

Syl. 2 (X, 1070). Admiralty jurisdiction.

Approved in The Eagle Point, 142 Fed. 454, where two British vessels are found in fault for collision on high seas, in United States court of admiralty, English law as to measure of damages will be applied.

Syl. 3 (X, 1076). Foreign seamen—Admiralty jurisdiction.

Approved in The Bound Brook, 146 Fed. 161, under article 13 of Treaty, December 11, 1871, between Germany and United States giving consular officers exclusive cognizance of difference between crew and captain of vessel, court of admiralty has no jurisdiction of suit against German vessel for wages.

Syl. 4 (X, 1076). Common law of nations—Admiralty jurisdiction.

See 113 Am. St. Rep. 872, note.

Syl. 6 (X, 1076). Amiralty jurisdiction—High seas.

Approved in In re Clyde S. S. Co., 134 Fed. 100, where statute of state where both vessels to collision on high seas belong gives right of action for wrongful death, admiralty court will apply such law.

114 U. S. 394-401, 29 L. 130, HUNTLEY v. HUNTLEY.

Syl. 1 (X, 1073). Statute of frauds.

Approved in Hartman v. Butterfield Lumber Co., 199 U. S. 338, 50 L. 219, 26 Sup. Ct. 63, one claiming under deed of trust from patentee with knowledge of prior conveyance of timber and right of way cannot question validity of such conveyance because it was made pursuant to agreement prior to patent in consideration of an advance of money to enable entrymen to obtain patent; Jones v. Patrick, 140 Fed. 408, verbal agreement between complainant and defendant that they should find purchaser for mining property on which defendant held an option and divide profits is not within statute of frauds of Nevada.

114 U. S. 401-410, 29 L. 149, STATE BANK v. UNITED STATES.

Syl. 1 (X, 1073). Defalcation—Liability of government.

Approved in Tanner v. Lee, 121 Ga. 526, 49 S. E. 593, creditor who, without notice of another's claim, receives money from debtor for pre-existing debt is not liable for an accounting to true owner.

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114 U. S. 411-417, 29 L. 147, THE LAURA.

Syl. 2 (X, 1073). Contemporaneous construction.

Approved in Walker v. Globe etc. Co., 140 Fed. 309, rights vested in author of map, etc., under U. S. Comp. St. 1901, p. 3406, are not taken away by implication by U. S. Comp. St. 1901, pp. 3414, 3416; State v. Northern Pac. Ry. Co., 95 Minn. 47, 103 N. W. 732, foreign railway company paying tax on gross earnings is not taxable under § 1530, Gen. St. 1894, but under other sections of c. 11; Ex parte Anderson, 46 Tex. Cr. 399, 81 S. W. 987, city court has no jurisdiction to try accused for violation of state statute prohibiting sales on Sunday.

114 U. S. 417-429, 29 L. 89, EX PARTE WILSON.

Syl. 1 (X, 1074). Supreme court—Criminal cases.

Approved in Kepner v. United States, 195 U. S. 126, 49 L. 123, 24 Sup. Ct. 797, right of government to appeal from judgment of acquittal in court of first instance in Philippine Islands under act of Philippine commission, August 10, 1901, was taken away by 32 Stat. at L. 691, c. 1369.

Syl. 2 (X, 1075). Prosecuting by indictment.

Approved in Schick v. United States, 195 U. S. 69, 49 L. 102, 24 Sup. Ct. 826, person prosecuted under 24 Stat. at L., 209, c. 840, U. S. Comp. Stat. 1901, p. 2228, § 11, for receipt for sale of oleomargarine, may waive jury trial; United States v. Powers & Robertson, 1 Alaska, 184, 185, prosecution for sale of liquor outside of particular building without license, being a misdemeanor, may be by information.

Syl. 8 (X, 1076). Felony at common law.

Approved in State v. Foster, 187 Mo. 605, 86 S. W. 249, offense of deterring witness from attending trial and giving evidence under Rev. St. 1899, § 2041, is a misdemeanor.

Syl. 10 (X, 1076). Test of infamous crime.

Approved in South Carolina v. United States, 199 U. S. 450, 50 L. 265, 26 Sup. Ct. 110, dispensing agents of a state which has taken charge of business of selling intoxicating liquors are within scope of U. S. Rev. St., §§ 3232, 3234, 3140; United States v. Camden Iron Wks., 150 Fed. 216, prosecution by information for receiving rebate in violation of 24 Stat. 379, c. 104, U. S. Comp. 1901, p. 3154, was proper; Jamison v. Wimbish, 130 Fed. 354, order of police magistrate directing person to serve term in chain gang is infamous punishment; United States v. Ames Mer. Co., 2 Alaska, 76, corporation may be indicted under United States statutes for carrying on business as liquor dealer without paying license required by § 3244, Rev. St. U. S. 1878; Garitee v. Bond, 102 Md. 383, 111 Am. St. Rep. 387, 62 Atl. 632, one convicted of making overcharge for prosecuting pension claim in violation of Act Cong., June 27, 1890, c. 634, § 4, 26 Stat.

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183, is not convicted of infamous crime within Code Pub. Gen. Laws, art. 93, § 51; Territory v. Stroud, 6 Okl. 109, 50 Pac. 266, prosecution by information for carrying on saloon business in violation of § 27, c. 47, Stat. 1893, was proper; Ex parte Lacey, 6 Okl. 6, 37 Pac. 1096, where person is arrested upon complaint before United States commissioner charging infamous crime, under § 1044, Rev. St. U. S., filing of complaint does not stay operation of statute of limitation; State v. Nichols, 27 R. I. 77, 60 Atl. 766, under Acts 1838, § 12, c. 6, p. 979, offense of beating an animal was cognizable by justice of the peace.

Syl. 12 (X, 1078). Information and indictment.

Approved in Cuyler v. Atlantic etc. R. Co., 131 Fed. 99, publisher of newspaper who in editorial criticises conduct and integrity of court cannot be punished for contempt under Rev. St., § 725; In re McNeil, 68 Kan. 369, 74 Pac. 1111, defendant convicted of assault and battery under Gen. St. 1901, and sentenced to both fine and imprisonment is entitled to discharge on habeas corpus.

114 U. S. 429-430, 29 L. 93, UNITED STATES v. PETIT.

Syl. 1 (X, 1078). Infamous crime—Counterfeiting.

Approved in State v. Nichols, 27 R. I. 82, 60 Atl. 768, offense of beating an animal is not an infamous crime under laws of Rhode Island.

114 U. S. 430-439, 29 L. 144, DODGE v. KNOWLES.

Syl. 5 (X, 1079). Sufficient notice of appeal.

Approved in Lochman v. Lang, 132 Fed. 4, where appeal has been allowed by taking security and filing transcript and docketing within time, failure to issue citation within time is not ground for dismissal of appeal.

114 U. S. 439-447, 29 L. 177, DOBSON v. HARTFORD CARPET CO.

Syl. 3 (X, 1080). Damages for infringement.

Approved in Regis v. Jaynes, 191 Mass. 251, 77 N. E. 777, plaintiff entitled to recover damages for use of trademark "Rex" or "Rexall" in sale of preparations for cure of dyspepsia; New York Bank Note Co. v. Hamilton Bank Note Co., 180 N. Y. 296, 73 N. E. 53, measure of damages for selling printing-presses with certain attachments in violation of agreement is difference between profits made from sale of presses with and without attachment.

114 U. S. 453-463, 29 L. 216, DISTRICT OF COLUMBIA COMMRS. v. BALTIMORE ETC. R. R. Co.

Syl. 1 (X, 1082). Title to streets.

Approved in dissenting opinion in Canton v. Cotton Warehouse Co., 84 Miss. 317, 105 Am. St. Rep. 428, 36 So. 280, 65 L. R. A. 561, majority holding power given to railway company to do all acts

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incidental to maintenance of its road includes right to lay conduits in its right of way to conduct water to its buildings. See 105 Am. St. Rep. 456, note.

114 U. S. 474-477, 29 L. 215, BURTON v. WEST JERSEY FERRY CO.

(X, 1083.) Miscellaneous. Cited in Rhea v. United States, 6 Okl. 257, 50 Pac. 994, exception to each and every and all of the instructions given by court to jury is sufficient.

114 U. S. 488-492, 29 L. 183, HOPT v. UTAH.

(X, 1084.) Miscellaneous. Cited in dissenting opinion in Kepner v. United States, 195 U. S. 135, 49 L. 126, 24 Sup. Ct. 797, majority holding under 32 Stat. at L. 691, c. 1369, government cannot appeal from judgment of acquittal in Philippine Islands.

114 U. S. 501-511, 29 L. 244, NEW ORLEANS ETC. R. R. CO. v. DELAMORE.

Syl. 2 (X, 1085). Bankruptcy of railroad.

Approved in In re Mathews etc. Slate Co., 144 Fed. 726, corporation engaged in quarrying slate and selling it after trimming and cutting it is engaged in mining and manufacturing business under Bankr. Act July 1, 1898, § 4b, as amended in 1903.

Syl. 3 (X, 1085). Status of franchise.

Approved in Vicksburg v. Vicksburg Waterworks Co., 202 U. S. 464, 50 L. 1109, 26 Sup. Ct. 660, contract rights under municipal ordinance which was property of water company covered by mortgage passed under foreclosure to purchaser; Julian v. Central Trust Co., 193 U. S. 105, 48 L. 636, 24 Sup. Ct. 399, property and franchises of railroad purchased at foreclosure sale are not liable for satisfaction of judgment for tort committed by mortgagor after sale because of failure of purchaser to comply with N. C. Code; Omaha Water Co. v. City of Omaha, 147 Fed. 15, foreclosure of mortgage of property of water company passes to purchaser contract to collect specified rates in contract between company and city; Farmers' Loan etc. Co. v. Meridian W. W. Co., 139 Fed. 665, franchise granted water company to maintain pipes in street to supply water may be mortgaged; San Joaquin etc. Irr. Co. v. Merced Co., 2 Cal. App. 600, 84 Pac. 288, where corporation was authorized to acquire property, etc., the exercise of such process in county other than where principal place of business is located subjected property therein to taxation.

114 U. S. 511-523, 29 L. 240, STURGES v. CARTER.

Syl. 2 (X, 1086). Collection of taxes—Previous year.

Approved in Georgia R. R. Co. v. Wright, 124 Ga. 615, 53 S. E. 260, acceptance by comptroller general of return from which taxable property has been omitted does not bar state of its right to proceed against delinquent for tax due on omitted property; Adams v. Kuy-

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kendall, 83 Miss. 594, 35 So. 835, Acts 1894, c. 34, p. 29, appointing state revenue agent to supervise action of taxing officers was not unconstitutional.

Syl. 6 (X, 1087). Taxation of corporate stock.

Approved in Union etc. Transit Co. v. Kentucky, 199 U. S. 205, 50 L. 154, 26 Sup. Ct. 36, due process of law is denied Kentucky corporation by tax assessed under Ky. St., § 4020, upon rolling stock permanently located in another state.

114 U. S. 523, 524, 29 L. 232, BEECHER MFG. CO. v. ATWATER MFG. CO.

Syl. 1 (X, 1087). Patent—Use of dies.

Approved in American Choc. Mach. Co. v. Helmstetter, 142 Fed. 980, Holmes' patent No. 492,205, for machine for coating confectionery, claim 1, is not infringed by Weeks' patent No. 634,633.

114 U. S. 525-542, 29 L. 264, FORT LEAVENWORTH R. R. v. LOWE.

Syl. 1 (X, 1087). Federal jurisdiction over land.

Approved in Hamburg American S. S. Co. v. Grube, 196 U. S. 415, 49 L. 533, 25 Sup. Ct. 352, public laws of New Jersey are in force in littoral waters of Sandy Hook peninsula below low-water mark whether enacted prior or subsequently to cession by New Jersey to United States by act March 12, 1846; United States v. Tully, 140 Fed. 900, homicide committed in place where, upon admission of Montana into Union, right to exclusive legislation was reserved to general government, is punishable in federal court.

Syl. 2 (X, 1088). Acquisition of land by government.

Approved in United Shoe Mach. Co. v. Duplessis etc. Co., 148 Fed. 36, patent granted prior to January 1, 1898, which is limited by Rev. St., § 4887, to terms of prior foreign patent, is not changed by 32 Stat. 1936, 1939.

Syl. 4 (X, 1088). Qualification of government's ownership.

Approved in In re Blount, 142 Fed. 267, where insolvent transferred all his property to one creditor to be distributed among his creditors save one, and said creditors expressed no objection, under Bankr. Act, July 1, 1898, c. 541, § 56b, 30 Stat. 560, the single creditor only could maintain petition in bankruptcy; United States v. Tully, 140 Fed. 905, after passage of the Organic Act, §§ 16 and 36, in the territory of Montana, ceased to be public lands; State v. Tully, 31 Mont. 376, 78 Pac. 764, where certain land was granted to proposed state of Montana, excluding certain section of each township, which remained in possession of federal government, a crime committed thereon is punishable in federal court.

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114 U. S. 542-547, 29 L. 270, CHICAGO ETC. R. R. CO. v. McGLINN.

Syl. 3 (X, 1090). Exclusive jurisdiction by federal government.

Approved in Hamburg American S. S. Co. v. Grube, 196 U. S. 415, 49 L. 533, 25 Sup. Ct. 352, public laws of New Jersey are in force in littoral waters of Sandy Hook peninsula below low-water mark whether enacted prior or subsequently to cession by New Jersey to United States by act March 12, 1846.

Syl. 4 (X, 1090). Treaties—Municipal laws.

Approved in In re Chavez, 149 Fed. 75, under civil law in force in New Mexico except as changed by statute, community property acquired by husband or wife is first subject to community debts, then antenuptial debts of husband.

114 U. S. 549-555, 29 L. 255, MARTINSBURG ETC. R. R. v. MARCH.

Syl. 1 (X, 1091). Effect of engineer's certificate.

Approved in Bush v. Jones, 144 Fed. 945, clause in specifications for foundation of building that "whole to be made perfectly water-tight and guaranteed," did not constitute guaranty that cellar should be water-tight, but was only guaranty of his compliance with specifications; Moore & Co. v. Cornwall, 144 Fed. 30, charter-party containing provision that certificate of marine surveyor that vessel in proper condition for voyage should be furnished charterers, contemplated actual survey and not a refusal on account of her age; Guild v. Andrews, 137 Fed. 371, 70 C. C. A. 49, stipulation in contract for construction of sewer making engineer arbiter of amount of work done and compensation to be paid is valid; Conners v. United States, 130 Fed. 614, under contract for construction of building containing provisions for excavation, contractor assumed risk of depth of excavation; Green Bay Lumber Co. v. Independent School Dist., 125 Iowa, 233, 101 N. W. 87, under contract for construction of schoolhouse which provided that payments should be made as work progressed on architect's certificates, payments made to contractor on such certificates on information furnished him by superintendent were sufficient; Edwards v. Hartshorn, 72 Kan. 24, 82 Pac. 522, provision in contract between principal contractor and subcontractor for grading of railroad, that work should be under supervision of engineer, who should make estimates for basis of payments, and that his decision should be final, is valid; Seretto v. Rockland etc. Ry., 101 Me. 145, 63 Atl. 653, where contract provides that installments to be paid by defendant to plaintiff contractor for work on railroad shall be determined by engineer, and another engineer is substituted, estimates of substituted engineer are binding; White v. Abbott, 188 Mass. 102, 74 N. E. 306, provision in contract between contractor and subcontractor that if latter should fail to complete contract and owner should be obliged to complete it and expense to be deducted from contract price, and cost to be certified by architect, is valid, and architect's determina-

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tion is binding; Livesley v. Johnston, 45 Or. 46, 106 Am. St. Rep. 647, 76 Pac. 949, 65 L. R. A. 783, contract for sale of hops providing for quantity and price, etc., is not wanting in mutuality because they must be "according to judgment" of buyer; Dallas etc. Loan Assn. v. Thomas, 36 Tex. Civ. 272, 81 S. W. 1044, where building contract required building to be completed to satisfaction of architect, in suit on contractor's bond after abandonment, sureties were bound by testimony of architect that certain items were necessary to complete building; Billmyer v. Insurance Co., 57 W. Va. 47, 49 S. E. 902, 903, an award made in pursuance to condition in policy of insurance is final to amount of loss but not as to other matters; Plumbing Co. v. Carr, 54 W. Va. 276, 46 S. E. 460, where contract for plumbing home provides that final payment shall be made when work is completed to satisfaction of architect, his reasons for rejection if made in good faith cannot be inquired into.

114 U. S. 555-562, 29 L. 248, STRANG v. BRADNER.

Syl. 2 (X, 1093). Claim against bankrupt.

Approved in In re Hardie, 143 Fed. 608, false statement made by partner in ordinary course of business in buying merchandise, for purpose of buying goods on credit, bars other partners from right to discharge in bankruptcy under Bankr. Act, July 1, 1898; Standard Sewing Machine Co. v. Alexander, 68 S. C. 510, 47 S. E. 712, plaintiff in tort on ground that goods obtained by fraudulent representations not estopped by proving in bankruptcy court notes taken for price of goods.

114 U. S. 564-575, 29 L. 277, WALES v. WHITNEY.

Syl. 3 (X, 1094). Naval court-martials.

See 111 Am. St. Rep. 936, note.

Syl. 5 (X, 1095). Restraint necessary for habeas corpus.

Approved in Mackenzie v. Barrett, 141 Fed. 966, defendant arrested under indictment for abandonment of his wife and having given bail is entitled to writ of habeas corpus to test right of court to detain him for any purpose; In re Dykes v. Baker, 13 Okl. 340, 74 Pac. 507, one who has been arrested upon indictment pending in district court and has given bail is not entitled to discharge on habeas corpus.

114 U. S. 576-587, 29 L. 273, RICHMOND MINING CO. v. ROSE.

Syl. 1 (X, 1095). Excessive size of mining claim.

Approved in McPherson v. Julius, 17 S. D. 123, 95 N. W. 434, in absence of fraud, locator's claim of six hundred and fifty feet in excess of amount allowed by law is invalid only as to excess.

Limited in Price v. McIntosh, 1 Alaska, 291, 292, where junior locator attempts to relocate excess in area in placer claim, he must locate por-

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tion of excess claim not actually occupied by diggings or property of senior locator.

Syl. 3 (X, 1096). Mining claim—Commencement of action.

Approved in Nome-Sinook Co. v. Simpson, 1 Alaska, 583, 586, 587, court will decide right of possession of mining property under laws of locality unless one or other of parties establishes valid title under United States mining laws; Pennsylvania Min. Co. v. Bales, 18 Colo. App. 110, 70 Pac. 444, trial and failure to object that adverse claim not filed within legal time is waiver.

Syl. 6 (X, 1096). Land Department—Disputed mining claim.

Approved in Wright v. Hartville, 13 Wyo. 507, 81 Pac. 651, 652, Land Department and not court has jurisdiction in action between townsite claimant and mining claimant.

Syl. 7 (X, 1096). Power of land office—Pending suit.

Approved in Deeney v. Mineral Creek Mill. Co., 11 N. M. 294, 67 Pac. 726, receiver's receipt issued to mining applicant during pendency of action in court in pursuance of § 2326, Rev. St. U. S., is void; dissenting opinion in Lily Min. Co. v. Kellogg, 27 Utah, 121, 74 Pac. 521, majority holding where no claim adverse to mining claim is filed within time limited by Rev. St., § 2325, it is conclusively presumed that applicant entitled to patent.

114 U. S. 587-598, 29 L. 235, WABASH ETC. RY. v. HAM.

Syl. 1 (X, 1097). Status of corporate property.

Approved in Dubreuil v. Gaither, 98 Md. 544, 56 Atl. 966, where partnership has note discounted at bank and proceeds are deposited there in name of one partner as trustee and trustee recovers judgment against receiver of bank for balance of deposit, in suit by receiver against all partners he was entitled to setoff of balance due bank on note against the judgment.

Syl. 2 (X, 1098). Status of consolidated corporations.

Approved in Chicago & N. W. Ry. Co. v. Fox River E. Ry. etc., 119 Wis. 188, 96 N. W. 542, purchase from street railway company of its equipment, but not franchises, etc., did not make purchaser seller's "successor" within terms of contract making seller and successors liable for wages of flagman at crossing.

114 U. S. 606-615, 29 L. 229, WURTS v. HOAGLAND.

Syl. 1 (X, 1099). Expense of drains.

Approved in Brown v. Gerald, 100 Me. 368, 109 Am. St. Rep. 526, 61 Atl. 792, 70 L. R. A. 472, manufacturing, selling and distributing electricity for power and manufacturing purposes is not a public use for which private property may be taken against will of the owner; Minnesota Canal etc. Co. v. Koochiching Co., 97 Minn. 448, 107 N. W. 412, under Minnesota statutes relating to construction of canal and creation of water-power, corporation is not authorized to divert water from

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navigable lakes and streams to such an extent as to interfere with navigation. See 102 Am. St. Rep. 833, note.

Syl. 2 (X, 1100). Equal protection of the law.

See 102 Am. St. Rep. 814, note.

Criticised in Voris v. Pittsburg Plate Glass Co., 163 Ind. 608, 70 N. E. 252, under sections Burns' Rev. St., 1894, providing for method assessing property for improvements, etc., assessment on abutting lots founded on report not giving names of owners on back-lying land, created lien on back-lying land.

114 U. S. 615-619, 29 L. 224, SCHOFIELD v. CHICAGO ETC. RY.

Syl. 1 (X, 1100). Duty on approaching railroad crossing.

Approved in Northern Pac. Ry. Co. v. Jones, 144 Fed. 49, 50, where plaintiff in full possession of his faculties walks on railroad track for half a mile, without looking back, or listening, and is struck by train, he is guilty of contributory negligence as matter of law; International etc. Co. v. Gaffney, 143 Fed. 307, owner of steamship which was in charge of tugs hired to take her from public pier to sea is not liable for injury to person on pier caused by hawser sweeping across pier, owing to handling of tug; dissenting opinion in Klutt v. Philadelphia etc. Ry. Co., 142 Fed. 398, majority holding where tugboat having a car float on each side ran down rowboat and plaintiff's intestate was drowned, question of negligence was for jury; Chicago etc. Ry. Co. v. Smith, 141 Fed. 931, where deceased stepped from behind a dead engine onto a railroad track, without looking, and was struck and killed, he was guilty of contributory negligence; Western Un. Tel. Co. v. Baker, 140 Fed. 319, where telegraph company neglected to deliver telegram to plaintiff informing her of her father's death, but she knew of it in time to have attended the funeral, but did not do so on account of indisposition or lack of care to take train, she could not recover damages; Southern Ry. Co. v. Carroll, 138 Fed. 641, where traveler knew of existence of railroad crossing, approached it at night in a carriage, with curtains drawn, without looking or listening, he was guilty of contributory negligence; Dishon v. Cincinnati etc. Ry. Co., 133 Fed. 478, 66 C. C. A. 345, where section-hand, in attempting to pass between two cars was crushed by one car moving against the other, he was guilty of contributory negligence; Chicago etc. Ry. Co. v. Andrews, 130 Fed. 72, 64 C. C. A. 399, plaintiff, who stepped upon railroad crossing directly in front of rapidly moving train in daytime, was guilty of contributory negligence; Gunn v. Union R. R. Co., 27 R. I. 326, 62 Atl. 121, where plaintiff backed from between horses and team on to track without looking he was guilty of contributory negligence; Bamberg v. Atlantic Coast Line R. R., 72 S. C. 392, 51 S. E. 989, where plaintiff was injured by being struck by railroad train while attempting to cross track, whether it was negligence not to look and listen is for jury.

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Syl. 2 (X, 1102). Directing verdict for defendant.

Approved in Detroit etc. R. Co. v. Lambert, 150 Fed. 557, here there was positive testimony that signals were given by train at crossing and testimony by others who were close by that none were given, question was for jury; Hews v. Equitable Life Assur. Society, 143 Fed. 853, where, in action on policy, only inference was that insured had made material misrepresentations as to his physical condition and as to his use of alcoholic beverages in his application and to medical examiner, court properly directed verdict for defendant; Christensen v. Metropolitan St. Ry. Co., 137 Fed. 712, 70 C. C. A. 657, in action for personal injuries sustained by breaking of chain, evidence that there was a flaw on inside of link, but could not be discoverable by inspection, did not justify submission of case to jury; International T. Book Co. v. Heartt, 136 Fed. 133, 69 C. C. A. 127, where, in an action against corporation for slanderous words spoken by its agent with reference to an embezzlement by plaintiff, it appeared that words were used after agent had gone to another locality, where he was not engaged in any duty under his contract, defendant was not liable; Van Winkle v. New York etc. R. R. Co., 34 Ind. App. 480, 73 N. E. 159, where plaintiff who was infirm and aged, approached a railroad crossing and noticed a long train moving slowly on the south track, and was struck by a train on the north track, which was standing near when he reached the crossing, is guilty of contributory negligence; Woolf v. Washington etc. Nav. Co., 37 Wash. 503, 79 Pac. 999, one who, driving toward railroad crossing, could see approaching locomotive for a considerable distance, was guilty of contributory negligence as matter of law in attempting to cross ahead of locomotive.

114 U. S. 622-635, 29 L. 257, BROWN v. HOUSTON.

Syl. 1 (X, 1103). State taxation on imports.

Approved in United States Rubber Co. v. Butler Bros. Shoe Co., 132 Fed. 399, foreign corporation which has established place of business in Colorado where its goods are sold by factor under contract is doing business in state within meaning of Act, Colo. 1901, § 10; People v. Wells, 185 N. Y. 278, 77 N. E. 20, when foreign corporation maintains office in the state for sale of its products which are imported into state and sold in original packages, taking bills receivable in payment, and they are held within state until maturity, and proceeds imported remitted to home office, they are taxable under Tax Law, Laws 1896, p. 800, c. 908, § 7. See 100 Am. St. Rep. 835, note.

Syl. 3 (X, 1104). State tax on exports.

Approved in In re Sydow, 4 Ariz. 210, 36 Pac. 215, Rev. St., tit. 42, par. 2239, § 9, as amended by Act No. 83, Laws, 1893, requiring dealers in merchandise except certain products of this territory, and sold by producer, to pay license tax, is valid. See 112 Am. St. Rep. 651, note.

Syl. 5 (X, 1105). Congressional control of interstate commerce.

Approved in People v. Reardon, 184 N. Y. 456, 112 Am. St. Rep. 645, 77 N. E. 978, Laws 1905, pp. 474, 477, c. 241, §§ 315, 324, imposing tax

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on transfers of stock, is constitutional; Hagan v. City of Richmond, 104 Va. 732, 3 L. R. A. (N. S.) 1120, 52 S. E. 389, under Act Cong., March 3, 1899, c. 425, § 19, 30 Stat. 1154, relating to authority of Secretary of War to remove obstructions from navigable waters, he did not have exclusive jurisdiction, but in absence of action on his part, local authorities may protect waterways.

Syl. 6 (X, 1105). Taxation—Products of other states.

Approved in Delaware etc. R. R. Co. v. Pennsylvania, 198 U. S. 354, 49 L. 1082, 25 Sup. Ct. 669, coal mined in Pennsylvania and shipped out of state for sale is not taxable in Pennsylvania under Pa. Laws, 1891, p. 229; Wrought Iron Range Co. v. Campen, 135 N. C. 518, 47 S. E. 662, where ranges are manufactured in one state and sold by sample in another and delivered in original packages, neither person exhibiting samples or delivering are peddlers, within Pub. Laws 1903, p. 336, c. 247.

Syl. 7 (X, 1105). Taxation—Mixture of property at destination.

Approved in Delaware etc. R. R. Co. v. Pennsylvania, 198 U. S. 352, 49 L. 1081, 25 Sup. Ct. 669, coal mined in Pennsylvania and shipped to another state for sale is taxable in latter state; Rehrer v. Stewart, 197 U. S. 65, 49 L. 666, 25 Sup. Ct. 403, tax upon resident managing agents of nonresident meat-packing houses, imposed by Ga. Act, Dec. 21, 1900, does not conflict with commerce clause of federal constitution when applied to business of selling to local consumers from original packages shipped into state without previous contract; Merchants' Transf. Co. v. Board of Review, 128 Iowa, 738, 105 N. W. 213, merchandise belonging to nonresident sellers, consigned to warehouseman within state and stored to account, future delivery on sales by owner, may be assessed by local authorities; Territory v. Denver etc., R. R. Co., 12 N. M. 433, 78 Pac. 76, upholding Laws 1901, p. 96, relating to inspection of hides; American Steel etc. Co. v. Speed, 110 Tenn. 546, 100 Am. St. Rep. 814, 75 S. W. 1042, where goods are shipped in original packages to agents and delivered in that form to customers and ninety per cent go ultimately to jobbers, beyond limits of state, they become common mass of property, and taxable within state; Gulf etc. Ry. Co. v. State, 32 Tex. Civ. 11, 73 S. W. 435, where corn had been shipped from South Dakota to Texarkana, Texas, and arrived there before contract had been entered into in Kansas for the sale of the corn to a firm in G., Texas, the transaction would be entirely local; Gulf etc. Ry. Co. v. State, 32 Tex. Civ. 8, 73 S. W. 433, where corn was shipped from South Dakota to Texarkana, Texas, with privilege of inspection at Kansas City, under through bill of lading, and it was transferred to other cars at Kansas City, and shipped to Texarkana, and it was sold by consignee at Texarkana to firm at G., Texas, and on arrival of corn at Texarkana, it was transhipped to G., the interstate shipment terminated at Texarkana; Standard Oil Co. v. Fredericksburg, 105 Va. 88, 52 S. E. 819, oil company which brings oil from foreign state into this state and mingles it with property of state, is not engaged in interstate commerce; Bacon v. Locke, 42 Wash. 217, 83 Pac. 722, Laws, 1905, pp. 372, 373, providing that every person

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who peddles out or "after shipment to the state" canvasses and sells by sample certain articles shall pay license, is unconstitutional under art. 1, § 12, Wash. Const. See 100 Am. St. Rep. 836, note.

Syl. 8 (X, 1107). Taxation—Nonresident and nonresident importer.

Approved in Union etc. Transit Co. v. Kentucky, 199 U. S. 206, 50 L. 154, 26 Sup. Ct. 36, due process of law is denied Kentucky corporation by tax under Ky. St., § 4020, upon its rolling stock permanently located in other states and employed there in prosecution of its business.

114 U. S. 642-653, 29 L. 250, EX PARTE REGGEL.

Syl. 1 (X, 1108). Construction of Rev. St., §§ 5278, 5279.

Approved in Knox v. State, 164 Ind. 234, 108 Am. St. Rep. 291, 73 N. E. 258, fugitive from justice extradited on specific charge may be tried on different charge without being afforded opportunity to return to state from which he was extradited.

Syl. 2 (X, 1108). Offenses against state laws.

Approved in Dodge v. Ellis, 795 U. S. 626, 49 L. 350, 25 Sup. Ct. 791, following rule. See 112 Am. St. Rep. 119, note.

Syl. 3 (X, 1108). Extradition—Proof that accused was in state.

See 112 Am. St. Rep. 141, note.

Syl. 4 (X, 1108). Criminal procedure in state courts.

Approved in Rogers v. Peck, 199 U. S. 434, 50 L. 260, 26 Sup. Ct. 87, reprieve by governor of state postponing execution of death sentence granted for purpose of appeal to United States supreme court, is not proceeding against prisoner within meaning of U. S. Rev. St., § 766, as amended by act March 3, 1893; Benson v. Henkel, 198 U. S. 10, 49 L. 922, 25 Sup. Ct. 569, objection to indictment charging violation of U. S. Rev. St., § 5451, in bribing two federal officials to reveal contents of certain report, are not available before United States commissioner; Munsey v. Clough, 196 U. S. 373, 49 L. 517, 25 Sup. Ct. 282, where accused was charged with crime of uttering forged instrument in Massachusetts on hearing before governor of N. H. to secure her release from extradition, the indictment was considered sufficient; People v. Nolan, 144 Cal. 80, 77 Pac. 776, Pen. Code, § 971, as amended, Laws 1880, providing that no other facts need be alleged in indictment against accessory before the fact than are required in indictment against his principal, is not unconstitutional; State v. Jack, 69 Kan. 392, 76 Pac. 913, 1 L. R. A. (N. S.) 167, proceeding before district judge upon application of county attorney under § 10, c. 265, p. 485, Laws 1897, to take testimony relative to isolation of "anti-trust law," is valid; In re Renshaw, 18 S. D. 37, 99 N. W. 84, Iowa statute providing that if mortgagor of personal property shall sell it without mortgagee's consent, he shall be guilty of larceny, covers case of sale in Iowa, though mortgage was executed and recorded in another state. See 112 Am. St. Rep. 129, note.

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Syl. 5 (X, 1109). Extradition—Proof that accused is fugitive.

Approved in Hughes v. Pflanz, 138 Fed. 984, where person had been convicted of crime in Indiana and when wanted was found in Kentucky, he was a fugitive from justice; In re Bruce, 132 Fed. 391, where petitioner committed crime of bigamy in New Jersey, about five years before his arrest in Maryland, and had resided in New Jersey about eighteen months after commission of crime, and laws of New Jersey provided that persons must be indicted within two years after commission of offense, the indictment was not barred; State v. Clough, 72 N. H. 179, 55 Atl. 555, 67 L. R. A. 946, on application for requisition to governor of New Hampshire, copy of affidavit certified by governor of Massachusetts, averring that accused had fled from Massachusetts, was sufficient to warrant finding that accused was a fugitive. See 112 Am. St. Rep. 110, 121, 122, note.

Syl. 6 (X, 1109). Extradition—Habeas corpus.

See 112 Am. St. Rep. 132-134, note.

CXV UNITED STATES.

115 U. S. 1-25, 29 L. 319, PACIFIC RAILWAY REMOVAL CASES.

Syl. 1 (X, 1111). Federal corporation can remove.

Approved in Buckhannan etc. R. Co. v. Davis, 135 Fed. 709, 68 C. C. A. 345, holding federal court having jurisdiction of liquidation proceedings may remove suits against receiver to condemn crossing, to federal court; Martin v. St. Louis etc. Ry. Co., 134 Fed. 135, sustaining removal suit brought against two corporations, one created under state laws, the other by federal statute, to establish joint liability for negligence; Wolff v. Choctaw etc. R. Co., 133 Fed. 603, holding action against corporation created by federal statute maintainable only in federal court of district, where principal office is.

Syl. 2 (X, 1112). Corporations consolidated under congressional acts.

Approved in Santa Fe etc. R. Co. v. Holmes, 136 Fed. 69, 68 C. C. A. 634, holding allegation that corporation was organized and existing under laws of United States sufficient.

Syl. 5 (X, 1114). Street widening controversies removable.

Approved in South Dakota etc. Ry. Co. v. Chicago etc. Ry. Co., 141 Fed. 582, permitting one owner in condemnation proceedings against several owning in severalty to remove.

Distinguished in City of Cleveland v. Cleveland etc. Ry. Co., 147 Fed. 175, denying removal, each defendant separately pleading continuous adverse possession for more than twenty-one years; Helena etc. Co. v.

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Spratt, 146 Fed. 317, denying separable controversy, one defendant, non-resident, holding legal title, other defendant, a resident, holding equitable; Perkins v. Lake Superior etc. Ry. Co., 140 Fed. 911, holding controversy not separable because one defendant owner of part of lands sought to be condemned.

115 U. S. 25-28, 29 L. 333, HADDEN v. MERRITT.

Syl. 1 (X, 1114). Foreign coin values, how ascertained.

Approved in Stone v. Whitridge, 129 Fed. 37, 64 C. C. A. 47, holding fluctuations in value of foreign money, allowing treasurer to order liquidation of entry at different value, refers to the metallic value.

115 U. S. 29-40, 29 L. 341, WHEELER v. NEW BRUNSWICK ETC. RY. CO.

Syl. 2 (X, 1115). Contract annulled when minds meet.

Approved in Stephens v. Essex County Park Commission, 143 Fed. 848, holding penalty not waived by owner refusing to answer contractor's letter explaining cause of delay.

115 U. S. 41-45, 29 L. 331, PIRIE v. TVEDT.

Syl. 1 (X, 1115). Separate answers unaffecting joint action.

Approved in Vulcan Detinning Co. v. American Can Co., 130 Fed. 637, denying removal, bill against principal defendant for practicing secret process learned through breach of trust of codefendant; American Bridge Co. v. Hunt, 130 Fed. 304, 64 C. C. A. 548, remanding foreign corporation joined with employee causing injury; County Commissioners v. United Rys. etc. Co., 99 Md. 89, 57 Atl. 677, remanding case where some of joint defendants opposed removal.

Distinguished in Alabama etc. Ry. Co. v. Thompson, 200 U. S. 215, 50 L. 446, 26 Sup. Ct. 161, holding action in tort against foreign corporation and servants, presents separable controversy and removable; Yeates v. Illinois C. R. Co., 137 Fed. 945, refusing to remand action against two companies, one owning, the other leasing, tracts, injury caused by negligence of lessee's employee.

115 U. S. 45-51, 29 L. 348, GIVILLIN v. DONNELLAN.

Syl. 1 (X, 1117). Mineral lands—Valid location, property.

Approved in Worthen v. Sidway, 72 Ark. 225, 79 S. W. 781, following rule; Clipper Min. Co. v. Eli Min. Co., 194 U. S. 226, 48 L. 950, 24 Sup. Ct. 632, holding owner of prior placer location can maintain adverse suit against petitioning patentee for subsequent lode location; Willitt v. Baker, 133 Fed. 947, holding person making location during night after original locators had resumed work, a trespasser; O'Connell v. Pinnacle Gold Mines Co., 131 Fed. 110, holding unpatented claims passed to administrator and not to heirs as grantees of government; Nome-Sinook Co. v. Simpson, 1 Alaska, 583, holding applicant may maintain adverse suit for mining patent in district court of Alaska; Peoria etc. Min. Co. v. Turner, 20 Colo. App. 479, 79 Pac. 917, declaring prospector going on

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prior, subsisting and valid location for purpose of discovery a trespasser; White Star Mining Co. v. Hultberg, 220 Ill. 598, 77 N. E. 334, holding possessor of mining claim has freehold estate within statute governing appeals, although patent not issued.

Syl. 2 (X, 1117). Action to determine adverse claims.

Approved by Behrends v. Goldsteen, 1 Alaska, 525, refusing to sustain mining claim location within boundaries of tract reserved for naval purposes; Allyn v. Schultz, 5 Ariz. 161, 48 Pac. 963, holding plaintiff must establish right against both defendant and United States; Miller v. Hamley, 31 Colo. 498, 74 Pac. 981, holding locator, obtaining patent for part of location, including discovery shaft, but remaining in possession of whole, not abandoning part omitted from patent.

Syl. 3 (X, 1118). Locator's discovery not benefiting adversary.

Approved in Rebecca Gold Min. Co. v. Bryant, 31 Colo. 123, 71 Pac. 1111, holding second location invalid, where Land Department's order canceling prior entry void, and receiver's certificate outstanding.

Syl. 4 (X, 1119). Issuance of patent—Evidence of title.

Approved in Lavagnino v. Uhlig, 198 U. S. 455, 49 L. 1124, 25 Sup. Ct. 716, holding conflicting area between mining locations does not, upon forfeiture of senior location, become unoccupied, enabling relocator to adverse junior locator's application.

115 U. S. 56-61, 29 L. 328, CRUMP v. THURBER.

Syl. 1 (X, 1119). Removal of causes—Separable controversy.

Approved in Elkins v. Howell, 140 Fed. 159, allowing grantee to remove suit brought against vendor and grantee by vendee, grantee's deed made after, but recorded before vendee's deed; Lucas v. Milliken, 139 Fed. 823, holding bill to enforce sale of stock brought against stockholder, corporation a nominal party, does not state separate cause; Miller v. Clifford, 133 Fed. 884, 67 C. C. A. 52, denying removal by single defendant in creditor's suit, brought against a number of stockholders to enforce double statutory liability; Groel v. United Elec. Co., 132 Fed. 254, remanding, where jurisdiction doubtful, in suit instituted by single stockholder, corporation an indispensable party against foreign corporation.

115 U. S. 61-67, 29 L. 329, STEWART v. DUNHAM.

Syl. 2 (X, 1121). Jurisdiction determined by amount involved.

Approved in Jacobs v. Mexican Sugar Co., 130 Fed. 591, entertaining jurisdiction of proceeding by stockholders to appoint receiver of insolvent corporation.

Distinguished in Stanwood v. Wishard, 134 Fed. 961, allowing creditors whose claims are less than two thousand dollars to join in creditor's suit.

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115 U. S. 67-69, 29 L. 346, ERHARDT v. HOGABOOM.

Syl. 2 (X, 1122). Patent conclusive against collateral attack.

Approved in Le Marchel v. Teegarden, 133 Fed. 827, holding person attacking patent for mistake or fraud must show fully all details thereof, before court will consider same; Semer v. Auditor General, 133 Mich. 574, 95 N. W. 734, denying owner's right to object to the auditor general's and land commissioner's report as to nature of land delinquent for taxes.

115 U. S. 69-78, 29 L. 316, THE CHARLES MORGAN.

Syl. 2 (X, 1123). Amending appeal in admiralty.

Approved in The San Rafael, 141 Fed. 275, holding appeal in admiralty vacates decree of district court and opens up trial anew.

Syl. 4 (X, 1124). Witnesses impeached by contradictory statements.

Approved in Barton v. Shull, 70 Neb. 329, 97 N. W. 294, holding witness may be asked whether contradictory statement not made while detailing conversation with third party.

115 U. S. 151-160, 29 L. 336, PHILLIPI v. PHILLIPE.

Syl. 2 (X, 1130). Trust repudiated, limitations begin running.

Approved in Patterson v. Hewitt, 11 N. M. 42, 66 Pac. 565, 55 L. R. A. 658, denying nonresident parties to original location agreement right to enforce accounting as to ores discovered years after nonresidents left state; Felkner v. Dooly, 28 Utah, 239, 78 Pac. 366, barring action by beneficiary to recover proceeds, delayed four years after notice of trustee claim.

115 U. S. 188-212, 29 L. 366, NORRINGTON v. WRIGHT.

Syl. 2 (X, 1131). Sales—Statements as warranties.

Approved in Mutual etc. Life Assn. v. Austin, 142 Fed. 401, denying insurer's right to contest policy outstanding five years, on ground policy delivered to insured in bad health; Henderson Elev. Co. v. North Georgia Milling Co., 126 Ga. 282, 55 S. E. 52, regarding words descriptive of subject matter of sale and time of shipment as warranties; dissenting opinion in Gardiner v. McDonogh, 147 Cal. 527, 81 Pac. 969, majority holding where beans were sold by description, title passed by delivery protecting bona fide purchaser from vendee.

Syl. 3 (X, 1132). Sales—Contract entire.

Approved in Inman Mfg. Co. v. American Cereal Co., 124 Iowa, 741, 100 N. W. 862, holding contract to build and install several machines, although some used independent, entire; Ross-Meehan Foundry Co. v. Roger Wheel Co., 113 Tenn. 374, 378, 83 S. W. 168, 169, 68 L. R. A. 829, declaring contract to deliver for three years all castings required, payment sixty days after delivery, entire.

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Syl. 5 (X, 1132). Sales—More or less—Immaterial variations.

Approved in Hadley Dean Plate Glass Co. v. Highland Glass Co., 143 Fed. 243, holding words "more or less" applicable to variations in quantity naturally occurring in such transactions.

Syl. 6 (X, 1133). Sales—Vendee's right to rescind.

Approved in Michigan Yacht etc. Co. v. Busch, 143 Fed. 932, holding positive refusal to pay installment relieved shipbuilder from further performance; Harding v. York Knitting Mills, 142 Fed. 231, 232, denying vendee's right to rescind as to yarn undelivered after using prior shipments, although complaining thereof.

Distinguished in McDonald v. Kansas City Bolt etc. Co., 149 Fed. 363, holding vendee estopped by failure to notify vendor after knowledge of defect and receipt of three carloads.

115 U. S. 213-221, 29 L. 372, FILLEY v. POPE.

Syl. 1 (X, 1134). Sales—Descriptive statements ordinarily warranties.

Approved in Mutual etc. Life Ins. Assn. v. Austin, 142 Fed. 401, denying insurer's right to contest policy in hands of insured for five years, on ground policy delivered while insured in bad health; dissenting opinion in Gardiner v. McDonogh, 147 Cal. 327, 81 Pac. 969, majority holding where goods were sold by description, title passed by delivery protecting bona fide purchaser from vendee.

Syl. 2 (X, 1134). Sales—Vendee's right to rescind.

Distinguished in McDonald v. Kansas City Bolt etc. Co., 149 Fed. 363, estopping vendee failing to notify vendor after receipt of three carloads and knowledge of defects.

115 U. S. 222-227, 29 L. 373, LANCASTER v. COLLINS.

Syl. 3 (X, 1135). Appeal—Weight of evidence not reviewable.

Approved in Delaware etc. R. Co. v. Kutter, 147 Fed. 57, holding general finding conclusive on matters of fact and equivalent to verdict of jury; Paul v. Delaware etc. R. Co., 130 Fed. 956, limiting appellate court to question whether findings supported by any evidence; Eureka Co. Bank v. Clarke, 130 Fed. 326, 64 C. C. A. 571, holding appellate court precluded from determining whether findings of act justified by evidence.

115 U. S. 228-247, 29 L. 384, VAN WHEEL v. WINSTON.

Syl. 1 (X, 1135). Equity—Allegations must be specific.

Approved in Tetrault v. Fournier, 187 Mass. 62, 72 N. E. 352, declaring allegation, plaintiffs delayed by attorney's negligence and misconduct, too general to constitute excuse for ten years' delay.

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Syl. 2 (X, 1136). Corporations—Fraudulent representations by president.

Distinguished in Stickel v. Atwood, 25 R. I. 459, 56 Atl. 688, holding president participating in bond issue liable to purchasers, although president ignorant bonds falsely represented.

115 U. S. 248-259, 29 L. 388, STARIN v. NEW YORK.

Syl. 1 (X, 1136). Construction of federal constitution reviewable.

Approved in Sloan v. United States, 193 U. S. 621, 48 L. 817, 24 Sup. Ct. 570, denying Indian treaty drawn in question by reference thereto on question as to proper construction of statute; Hall v. Chicago etc. Ry. Co., 149 Fed. 566, holding action under employer's liability act one arising under a law of the United States.

Syl. 4 (X, 1138). Defendant pleading separate defenses.

Approved in Vulcan Detinning Co. v. American Can Co., 130 Fed. 637, denying controversy separable bill enjoining some defendants from practicing secret process wrongfully obtained and restraining codefendant, a former employee, from assisting them.

Distinguished in Manufacturers' Com. Co. v. Brown-Alaska Co., 148 Fed. 310, holding action against maker and indorsers of note severable.

115 U. S. 264-284, 29 L. 377, HENDERSON v. WADSWORTH.

Syl. 2 (X, 1139). Jurisdiction—Uniting separate claims.

Approved in The Joseph B. Thomas, 148 Fed. 767, holding claims cannot be added together to give appellate court jurisdiction; Feely v. Bryan, 55 W. Va. 590, 47 S. E. 309, dismissing appeal by mortgage preferred creditor, decree adjudging property for benefit of creditors, none of whom get one hundred dollars.

115 U. S. 300-307, 29 L. 403, MERRICK'S EXECUTOR v. GIDDINGS.

Syl. 2 (X, 1141). Attorney and client—Compromising claim.

See 100 Am. St. Rep. 446, note.

115 U. S. 308-321, 29 L. 398, SMITH v. BLACK.

Syl. 2 (X, 1141). Creditor purchasing at trustee's sale.

Approved in Anderson v. Messinger, 146 Fed. 932, holding pledgee may become purchaser at judicial sale of pledge conducted by officer of the law.

115 U. S. 321-339, 29 L. 414, KENTUCKY RY. TAX CASES.

Syl. 1 (X, 1141). Notice of taxation proceedings unnecessary.

Approved in Chicago etc. R. Co. v. State, 128 Wis. 654, 108 N. W. 585, holding owners of railroad property of state board's action determining average rate unnecessary.

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Syl. 3 (X, 1143). Railroads taxed differently from real property.

Approved in Michigan etc. R. R. Co. v. Powers, 201 U. S. 293, 300, 50 L. 761, 764, 26 Sup. Ct. 466, upholding taxation of railroad property at the average rate imposed on property subject to ad valorem taxes ascertained by dividing total tax levied by value of property; Cook v. Marshall Co., 196 U. S. 274, 49 L. 476, 25 Sup. Ct. 233, holding tax on retail tobacco dealer not invalid because interstate jobbers and wholesalers exempted therefrom; Field v. Barber Asphalt Paving Co., 194 U. S. 622, 48 L. 1153, 24 Sup. Ct. 784, sustaining statutory provision permitting only resident owners to protest against improvement; Michigan R. R. Tax Cases, 138 Fed. 233, 238, 239, refusing to enjoin collection of tax against railroad property based on actual value thereof, because other property taxed at less than actual value; St. Louis etc. Ry. Co. v. Davis, 132 Fed. 634, sustaining method, taxation value fixed by dividing the entire valuation of railroad property upon a mileage basis; Commonwealth v. Union etc. Transit Co., 118 Ky. 144, 80 S. W. 493, denying unjust discrimination, although refrigerator-car company taxed on all cars, while railroad company taxed only on cars within state; State v. Bazille, 97 Minn. 20, 106 N. W. 97, sustaining act imposing tax on certain devises, bequests and inheritances; People v. Reardon, 184 N. Y. 445, 112 Am. St. Rep. 636, 77 N. E. 974, upholding act imposing tax on transfers of stock in domestic and foreign corporations; Lacy v. Packing Co., 134 N. C. 573, 47 S. E. 55, sustaining license tax on packing-houses; Chicago etc. R. Co. v. State, 128 Wis. 615, 108 N. W. 571, sustaining assessment, railroad property valued on basis of franchise, assessors omitting similar elements as to ordinary corporations; Kingsley v. Merrill, 122 Wis. 201, 99 N. W. 1049, 67 L. R. A. 200, sustaining act making debts due from solvent debtors subject to taxation. See 104 Am. St. Rep. 302, note.

115 U. S. 339-348, 29 L. 432, KNICKERBOCKER ETC. INS. CO. v. PENDLETON.

Syl. 1 (X, 1144). Writ of error may be amended.

Approved in Thomas v. Green County, 146 Fed. 970, amending writ by adding names of omitted plaintiffs.

115 U. S. 348-352, 29 L. 412, SARGENT v. HELTON.

Syl. 1 (X, 1144). State court not enjoined by federal.

Distinguished in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 245, 49 L. 465, 25 Sup. Ct. 251, enjoining further prosecution in state court, where condemnation proceedings removed on ground of diverse citizenship.

115 U. S. 353-363, 29 L. 407, CAMORS v. WATTS.

Syl. 3 (X, 1145). Bonds—Prospective damages stipulated.

Approved in United States v. Alcorn, 145 Fed. 998, holding stipulation in bond of bidder for mail contract an absolute undertaking to pay amount named therein; Stillwell v. Paepke-Leicht etc. Co., 73 Ark. 436,

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108 Am. St. Rep. 42, 84 S. W. 485, holding sum designated in logging contract as a forfeit a penalty and unenforceable; Griffith v. Blackwater B. & L. Co., 55 W. Va. 628, 48 S. E. 451, 69 L. R. A. 124, holding amount allowed contractor under terminated contract for expenditures not apportioned between executed and unexecuted part of contract.

Syl. 4 (X, 1146). Charter exists until charterer defaults.

Approved in Moore & Co. v. Cornwall, 144 Fed. 33, holding surveyor's refusal to survey not justifying cancellation of charter by charterers.

(X, 1145.) Miscellaneous. Cited in Wiser v. Lawler, 7 Ariz. 183, 62 Pac. 700, refusing to consider assignment of error, without statement wherein error consisted.

115 U. S. 363-373, 29 L. 393, POPE v. ALLIS.

Syl. 2 (X, 1146). Variance immaterial, unless misleading.

Approved in Schiffer v. Anderson, 146 Fed. 459, allowing proof under general denial that defendant "S" was not member of firm as alleged.

Syl. 3 (X, 1146). Former pleadings admissible as evidence.

Approved in Wyles v. Berry, 116 Ky. 380, 76 S. W. 127, holding withdrawn answer admissible against defendant.

Syl. 5 (X, 1146). Sales—Vendee may rescind.

Approved in McDonald v. Kansas City Bolt etc. Co., 149 Fed. 363, holding immediate notice of refusal indispensable to vendee's release of liability.

Syl. 6 (X, 1147). Rescission—Sale by sample.

Approved in dissenting opinion in Gardiner v. McDonogh, 147 Cal. 327, 81 Pac. 969, majority holding sale by description and not by sample, title passed upon delivery.

Syl. 7 (X, 1147). Vendee may inspect arriving goods.

Approved in Thick v. Detroit etc. Ry. Co., 137 Mich. 713, 109 Am. St. Rep. 694, 101 N. W. 65, holding defendant had right to examine ties sold to be of certain quality.

115 U. S. 392-407, 29 L. 423, DEFFEBACK v. HAWKE.

Syl. 4 (X, 1150). Minerals—Subsequent discovery unaffecting patent.

Approved in Board of Education v. Mansfield, 17 S. D. 80, 82, 106 Am. St. Rep. 771, 95 N. W. 288, 289, denying townsite patent open to collateral attack, parties subsequently locating mining claims.

Syl. 7 (X, 1151). Terms of conveyance in patent.

Approved in Creede etc. Milling Co. v. Uinta Tunnel etc. Co., 196 U. S. 358, 49 L. 512, 25 Sup. Ct. 266, denying statutory warrant to limit patent of lode claim by reserving tunnel rights; McCorkell v. Herron, 128 Iowa, 330, 103 N. W. 990, holding erroneous recitals in patent not binding on grantee.

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Syl. 10 (X, 1152). Adverse holder denied improvements.

Approved in Beasley v. Equitable Securities Co., 72 Ark. 611, 84 S. W. 228, bond for title is not color of title within statute allowing compensation for improvements made by occupant; Woodruff v. Wallace, 3 Okl. 375, 378, 41 Pac. 364, 365, denying person whose homestead entry was canceled for fraud benefit of occupying claimant's act.

115 U. S. 408-413, 29 L. 428, SPARKS v. PIERCE.

Syl. 2 (X, 1153). Occupancy not creating vested rights.

Approved in Tyee Consol. Min. Co. v. Langstedt, 136 Fed. 127, 69 C. C. A. 548, holding adverse possession insufficient to start statute of limitations against locator before patent issued; La Fevre v. Amonson, 11 Idaho, 48, 81 Pac. 72, holding mere occupancy did not create vested right against purchaser from government.

Syl. 3 (X, 1153). Public lands—Relief against patent.

Approved in Gebo v. Clark Fork C. Min. Co., 30 Mont. 92, 75 Pac. 860, holding complaint to charge patentee as trustee, not alleging plaintiff did not make voluntary relinquishment, insufficient; Baldwin v. Keith, 13 Okl. 630, 75 Pac. 1126, refusing to declare resultant trust, complaint failing to allege that claimant resided upon, cultivated and improved the land; Parker v. Lynch, 7 Okl. 660, 56 Pac. 1091, holding party offering to contest homestead entry cannot maintain action to declare patentee, the entryman at time contest offered, a trustee.

115 U. S. 413-429, 29 L. 435, ALABAMA v. BURR.

Syl. 3 (X, 1154). Pleadings must state facts.

Distinguished in Nester v. Diamond Match Co., 143 Fed. 75, holding allegation that defendant did not run, sort and deliver logs with reasonable dispatch cured by subsequent counts.

115 U. S. 429-439, 29 L. 419, EACHUS v. BROMALL.

Syl. 3 (X, 1154). Reissue invalid, broader than patent.

Cited generally in Fitch v. Spang etc. & Co., 140 Fed. 294, holding unnecessary to consider defense based on principal case, patent not infringed.

115 U. S. 439-453, 29 L. 440, GIBSON v. LYON.

Syl. 3 (X, 1155). Federal courts following state decisions.

Distinguished in Davis v. Commonwealth etc. Co., 141 Fed. 717, 718, holding state decision as to boundaries not binding on federeal court as to pending suits.

Syl. 4 (X, 1155). State decisions—Rules of property.

Approved in Davis v. Commonwealth Land etc. Co., 141 Fed. 717, 718, refusing to follow state decision as to boundaries in pending suits by owners in federal court.

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115 U. S. 465-469, 29 L. 445, LEONARD v. OZARK LAND CO.

Syl. 1 (X, 1156). Appeal—Injunction ordered by final decree.

Approved in Elliott v. Kuzek, 2 Alaska, 591, holding on demurrer, appeal and supersedeas bond not operating to abate suit on injunction bond; State v. Superior Court, 39 Wash. 117, 109 Am. St. Rep. 862, 80 Pac. 1109, 1 L. R. A. (N. S.) 554, holding injunction prohibiting shooting-gallery, etc., not superseded by appeal.

115 U. S. 487-505, 29 L. 458, KURTZ v. MOFFITT.

Syl. 1 (X, 1158). Habeas corpus a civil suit.

Approved in State v. Superior Court, 32 Wash. 146, 72 Pac. 1041, declaring appeal from judgment denying habeas corpus ineffectual without appeal bond.

Syl. 2 (X, 1158). Federal courts—Habeas corpus not removable.

Approved in Ah Sou v. United States, 200 U. S. 611, 50 L. 619, 26 Sup. Ct. 752, dismissing appeal from order deporting Chinese slave girl; Tincher v. Arnold, 147 Fed. 677, holding circuit court without jurisdiction of action to construe will as to executor's duties; Clifford v. Williams, 131 Fed. 102, holding circuit court without jurisdiction to issue habeas corpus to determine question of child's custody; Gallagher v. Asphalt Co. of America, 65 N. J. Eq. 282, 55 Atl. 268, holding federal court without jurisdiction of creditor's bill to enjoin corporation from exercising franchise.

Distinguished in De La Rama v. De La Rama, 201 U. S. 307, 50 L. 767, 26 Sup. Ct. 485, reviewing judgment reversing decree of court of first instance granting divorce and awarding $81,042.75 as alimony, pendente lite.

115 U. S. 512-523, 29 L. 463, MISSOURI PAC. RY. v. HUMES.

Syl. 2 (X, 1161). State laws affecting private property.

Approved in St. Louis etc. Ry. Co. v. Davis, 132 Fed. 633, denying property taken without due process, where railroad company present at meeting of assessors and heard by counsel.

Syl. 4 (X, 1162). Penalties—Violations of statutory requirements.

Approved in Terre Haute etc. Ry. Co. v. Salmon, 161 Ind. 133, 134, 137, 138, 67 N. E. 918, 919, 920, holding act allowing owners to collect expenses for repairing fences along railroad, together with reasonable attorney's fee, is constitutional; Mier v. Phillips Fuel Co., 130 Iowa, 577, 107 N. W. 624, sustaining act inflicting penalty upon mine operators taking coal from adjoining land without permission; Mumford v. Chicago etc. Ry. Co., 128 Iowa, 693, 104 N. W. 1138, sustaining act prohibiting railroad from restricting liability for damages sustained by employees from negligence of coemployees; Yazoo etc. R. R. Co. v. Harrington, 85 Miss. 375, 37 So. 1017, sustaining act requiring railroad companies to maintain cattle-guards; Casey v. St. Louis Transit Co., 116 Mo. App. 256, 264, 91 S. W. 426, 429, sustaining act, but holding person suing thereunder

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must demand entire penalty provided therein for wrongful death through negligence of employees; State v. Cantwell, 179 Mo. 264, 78 S. W. 574, as to act prohibiting the working of mining employees beneath surface more than eight hours; Marsh v. Kansas City etc. Ry. Co., 104 Mo. App. 585, 78 S. W. 286, as to act providing railroad shall pay $5,000 in cases of death due to negligent running of trains; Sanger v. Chesapeake etc. Ry. Co., 102 Va. 92, 45 S. E. 752, as to act requiring railroad to fence right of way.

Distinguished in Cigarmaker's etc. Union v. Goldberg, 72 N. J. L. 215, 111 Am. St. Rep. 663, 61 Atl. 458, 70 L. R. A. 156, declaring unconstitutional act exacting from infringer of trademark penalty for benefit of injured party.

Syl. 5 (X, 1163). Equal protection—Double damages—Railroads.

Approved in Cowart v. City Council, 67 S. C. 44, 45 S. E. 126, upholding ordinance taxing lenders, except banks, loaning on personalty, according to schedule of given business.

115 U. S. 524-427, 29 L. 480, DAVIS SEWING MACH. CO. v. RICHARDS.

Syl. 1 (X, 1165). Guaranty—Notice of acceptance unnecessary.

Approved in Frost v. Standard Metal Co., 215 Ill. 242, 74 N. E. 139, notice that guaranty accepted and credit extended unnecessary when guarantor knew guaranty accepted and credit would be extended; Buhrer v. Baldwin, 137 Mich. 270, 100 N. W. 470, holding contract of guaranty reciting consideration, notice of acceptance unnecessary. See 105 Am. St. Rep. 515, note.

Syl. 2 (X, 1165). Guaranty—Notice of acceptance necessary.

Approved in John Deere Plow Co. v. McCullough, 102 Mo. App. 461, 76 S. W. 716, holding guaranty of payment sent after contract of sale made unenforceable in absence of notice. See 105 Am. St. Rep. 513, note.

115 U. S. 528-542, 29 L. 467, TRAER v. CLEWS.

Syl. 2 (X, 1165). Statute of limitations—Fraud.

Approved in dissenting opinion in Atchison etc. Ry. Co. v. Grain Co., 68 Kan. 594, 597, 75 Pac. 1054, 1055, majority holding code section postponing running of statute of limitations until discovery of fraud without application to action upon contract.

115 U. S. 550-565, 29 L. 472, THOMPSON v. ALLEN COUNTY.

Syl. 1 (X, 1167). Equity—Inadequacy of law.

Approved in Ehrlich v. Willenski, 138 Fed. 426, intimating that equitable action would lie to enforce liability against treasurer of cigarmaker's international union.

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Syl. 2 (X, 1167). Equity—Taxes not collected through receiver.

Approved in Maria v. San Jacinto etc. Irr. Dist., 131 Fed. 789, 790. holding proper remedy to collect judgment against irrigation district was to mandamus officers to levy assessment; Boskwitz v. Thompson, 144 Cal. 731, 78 Pac. 292, holding court of equity in absence of statutory authority without jurisdiction to enforce lien created by statute.

115 U. S. 587-598, 29 L. 499, PULLMAN CAR CO. v. MISSOURI PAC. RY.

Syl. 4 (X, 1169). Railroads controlling other roads.

Distinguished in Louisville etc. R. Co. v. Coulter, 131 Fed. 307, 308, considering, for purposes of taxation, line operated by second company, the majority of shares of which are owned by controlling company.

115 U. S. 598-600, 29 L. 504, HASSALL v. WILCOX.

Syl. 1 (X, 1170). Jurisdiction not conferred by aggregating claims.

Approved in Feely v. Bryan, 55 W. Va. 592, 47 S. E. 310, holding particular sums decreed creditors attacking preference cannot be added for appellate jurisdiction.

115 U. S. 600-611, 29 L. 477, NORTHERN PAC. RY. v. TRAILL COUNTY.

Syl. 2 (X, 1171). Railroad land grants—Cost of surveying.

Approved in United States v. Montana Lumber etc. Co., 196 U. S. 577, 49 L. 605, 25 Sup. Ct. 367, holding private survey inadmissible to identify odd-numbered sections included in railroad grant in action by United States for timber cut thereon.

Distinguished in Baltimore Shipbuilding etc. Co. v. Baltimore, 195 U. S. 381, 49 L. 244, 25 Sup. Ct. 50, holding land conveyed by United States for drydock purposes with reservation for forfeiture not wholly exempt from state taxation; Territory v. Delinquent Taxpayers, 12 N. M. 71, 73 Pac. 624, lands in perfect Spanish grant are taxable though grant submitted to court of land claims and patent not yet issued.

115 U. S. 611-616, 29 L. 502, BOWMAN v. CHICAGO ETC. RY.

Syl. 1 (X, 1172). Jurisdiction not conferred by stipulation.

Approved in Smith v. Chesapeake etc. Ry. Co., 118 Ky. 828, 82 S. W. 411, dismissing appeal where amount of damage increased by sham amendment; Casey v. St. Louis Transit Co., 116 Mo. App. 271, 91 S. W. 432, disapproving suits to recover less than statutory penalty in order to oust appellate court of jurisdiction.

115 U. S. 616-619, 29 L. 482, CLAY COUNTY v. McALEER.

Syl. 1 (X, 1173). Mandamus denied maximum levy insufficient.

Approved in Pettibone v. West Chic. Park Commrs., 215 Ill. 322, 74 N. E. 394, upholding act providing tax for maintenance of park and payment of bonded interest, although tax sufficient only for park maintenance.

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115 U. S. 620-634, 39 L. 483, CAMPBELL v. HOLT.

Syl. 1 (X, 1173). Adverse possession gives good title.

Approved in Linton v. Heye, 194 U. S. 628, 48 L. 1157, 24 Sup. Ct. 856, reaffirming rule; Northern Pac. Ry. Co. v. Ely, 197 U. S. 8, 49 L. 642, 25 Sup. Ct. 302, holding title to right of way granted by Congress to railroad not included within one hundred feet of center acquirable by adverse possession; Linton v. Heye, 69 Neb. 454, 111 Am. St. Rep. 559, 95 N. W. 1041, sustaining statute respecting actions for recovery of real property against married woman during coverture; dissenting opinion in Brock v. Kirkpatrick, 69 S. C. 251, 252, 48 S. E. 79, majority holding limitations do not run against right of creditors to subject lands devised to payment of testator's debt till return nulla bona made against executor. See 111 Am. St. Rep. 456, 561, note.

Syl. 3 (X, 1174). Statute of limitations specially pleaded.

Approved in Davis v. Mills, 194 U. S. 457, 48 L. 1017, 24 Sup. Ct. 692, as to actions in another state against corporate directors on liability prior to enactment.

Syl. 6 (X, 1174). Statute of limitation—Repeal.

Approved in Condon v. City of Eureka Springs, 135 Fed. 568, sustaining act, repealing city's right to call in outstanding warrants and to reject those spurious; Orman v. Van Arsdell, 12 N. M. 348, 349, 78 Pac. 43, 67 L. R. A. 438, upholding Laws 1903, p. 121, prescribing limitation of actions as to nonresidents, though retrospective in operation; House v. Carr, 185 N. Y. 458, 78 N. E. 172, refusing to restrain sale under power of sale contained in barred mortgage.

Distinguished in Fuller & Fuller Co. v. Johnson, 8 Okl. 604, 58 Pac. 746, holding action barred by former statute, not revived unless so evident from repealing statute; State v. Aberdeen, 34 Wash. 65, 66, 74 Pac. 1023, upholding statute declaring existing statutes not a bar to actions by state in suits against towns for liquor license fees.

115 U. S. 634-649, 29 L. 505, BALTZER v. RALEIGH ETC. RY.

Syl. 1 (X, 1175). Equity reforms—Mistake clearly shown.

Approved in Barker v. Pullman Co., 134 Fed. 72, 67 C. C. A. 196, refusing to reform contract signed by principals, although agents negotiating came understood agreement to be different.

115 U. S. 650-673, 29 L. 516, NEW ORLEANS GAS CO. v. LOUISIANA LIGHT CO.

Syl. 1 (X, 1176) Consolidated corporation exercising constituent's privileges.

Distinguished in Shaw v. Covington, 194 U. S. 598, 48 L. 1133, 24 Sup. Ct. 754, denying consolidated corporation's right to claim exclusive privilege of a constituent corporation especially where public poles against claim.

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Syl. 3 (X, 1177). Public privileges controlled by legislative authority.

Approved in Water etc. Co. v. City of Hutchinson, 144 Fed. 264, declaring ultra vires contract entered into by city, giving company exclusive right to use streets to supply water, etc.; Purnell v. McLane, 98 Md. 593, 56 Atl. 832, holding in absence of special franchise applicant not entitled to permit to use conduits.

Syl. 4 (X, 1178). Constitution protects exclusive charter grants.

Distinguished in New Orleans Gaslight Co. v. Drainage Commission, 197 U. S. 459, 49 L. 834, 25 Sup. Ct. 471, denying gas company's right to recover sums expended making changes in system necessitated by construction of municipal drainage system; Tillamook Water Co. v. Tillamook City, 139 Fed. 406, holding contract with water company not violated by construction of municipal competing plant; Leggett v. Detroit, 137 Mich. 253, 100 N. W. 569, denying city's power to accept land exempting other land of grantor from future street assessments.

Syl. 5 (X, 1179). State's police power limited by constitution.

Approved in Dobbins v. Los Angeles, 195 U. S. 239, 49 L. 176, 25 Sup. Ct. 18, reversing where bill to enjoin enforcement of municipal ordinance prohibiting maintenance of gasworks within certain limits dismissed by lower court; dissenting opinion in Sweet v. Ballentyne, 8 Idaho, 442, 69 Pac. 999, majority upholding act prohibiting grazing and herding of sheep within two miles of inhabited dwellings.

Syl. 7 (X, 1180). Statutory authority granted to corporations.

Approved in Southern Kansas Ry. Co. v. Oklahoma City, 12 Okl. 104, 69 Pac. 1057, denying city's right to open street until railroad improvements are condemned, appraised and paid for.

Syl. 10 (X, 1181). Constitutional prohibition upon state laws.

Approved in New York v. Van De Carr, 199 U. S. 558, 50 L. 309, 26 Sup. Ct. 144, sustaining sanitary provision giving board of health discretionary power to grant or withhold permits to sell milk; Manigault v. Springs, 199 U. S. 481, 50 L. 279, 26 Sup. Ct. 127, holding owner not entitled to compensation where lands flooded by erection of dam under legislative authority; New Orleans Gaslight Co. v. Drainage Commission, 197 U. S. 459, 49 L. 834, 25 Sup. Ct. 471, denying gas company's right to recover money expended conforming system to new municipal drainage system; Jacobsen v. Massachusetts, 197 U. S. 25, 49 L. 649, 25 Sup. Ct. 358, upholding act authorizing compulsory vaccination; Lake Erie etc. R. R. Co. v. Shelley, 163 Ind. 44, 71 N. E. 154, denying railroad compensation for constructing and maintaining crossings and approaches because of highway constructed across tracks; Fort Smith v. Hunt, 72 Ark. 564, 102 Am. St. Rep. 51, 82 S. W. 166, 66 L. R. A. 238, contract between city and electric company prescribing terms on which latter may erect poles in streets does not invalidate later pole license ordinance; State v. Hyman, 98 Md. 614, 57 Atl. 9, 64 L. R. A. 637, sustaining sweat-shop act as to manufacture of clothing in tenement

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houses; Van Cleve v. Passaic Val. etc. Commrs., 71 N. J. L. 224, 58 Atl. 587, holding act permitting city of Paterson to empty sewage in Passaic river revocable; dissenting opinion in Wright v. Hart, 182 N. Y. 354, 75 N. E. 413, 2 L. R. A. (N. S.) 338, majority declaring unconstitutional act requiring detailed inventory five days before sale and notice to creditors. See 103 Am. St. Rep. 868, note.

115 U. S. 674-683, 29 L. 525, NEW ORLEANS WATERWORKS v. RIVERS.

Syl. 1 (X, 1182). Legislative control of public privileges.

Approved in Water etc. Co. v. City of Hutchinson, 144 Fed. 264, declaring ultra vires contract entered into by city, giving corporation exclusive right to use streets; Westminster Water Co. v. Mayor etc., 98 Md. 556, 557, 103 Am. St. Rep. 424, 56 Atl. 992, 64 L. R. A. 630, declaring contract between city and water company to annually levy taxes and pay proceeds to company ultra vires.

Syl. 3 (X, 1183). Municipal corporations granting exclusive franchises.

Distinguished in Tillamook Water Co. v. Tillamook City, 139 Fed. 406, denying contract between city and water company violated by competing municipal plant; Leggett v. Detroit, 137 Mich. 253, 100 N. W. 569, denying city's power to except land, exempting other land of grantor from future street assessments; Petersburg v. Petersburg Aqueduct Co., 102 Va. 659, 47 S. E. 849, upholding city's power to prohibit existing water company from digging up and obstructing streets to extend system.

115 U. S. 683-700, 29 L. 510, LOUISVILLE GAS CO. v. CITIZENS' GAS CO.

Syl. 2 (X, 1185). Contracts under state legislation.

Approved in Bradley v. Lightcap, 195 U. S. 23, 49 L. 75, 24 Sup. Ct. 748, declaring due process of law denied, act construed by court to defeat rights of mortgagee in possession upon failure to comply therewith; Terre Haute etc. R. R. Co. v. Indiana, 194 U. S. 589, 48 L. 1129, 24 Sup. Ct. 767, reviewing state decision, enforcing, under erroneous construction, charter obligation to pay surplus profits.

Syl. 4 (X, 1186). Municipal corporations granting exclusive franchises.

Approved in Mercantile etc. Co. v. Columbus Water Wks. Co., 130 Fed. 184, and Columbia Ave. Sav. Fund etc. Co. v. Dawson, 130 Fed. 173, both enjoining city from issuing bonds and constructing competing system of waterworks; New Orleans Gaslight Co. v. Drainage Commission, 111 La. 843, 35 So. 931, arguendo.

Distinguished in Shaw v. Covington, 194 U. S. 599, 48 L. 1133, 24 Sup. Ct. 754, denying consolidated corporation right to claim exclusive fran-

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chise enjoyed by one of constituent corporations; Water etc. Co. v. City of Hutchinson, 144 Fed. 264, denying city's right to grant for term of years exclusive right to use streets; Petersburg v. Petersburg Aqueduct Co., 102 Va. 659, 47 S. E. 849, denying existing water company's right to dig up and obstruct streets in order to extend system.

CXVI UNITED STATES.

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116 U. S. 1-7, 29 L. 535, HANLEY v. DONOGHUE.

Syl. 1 (XI, 7). Judgments—Full faith and credit.

Approved in Jasper v. Currie, 69 Neb. 6, 94 N. W. 996, in action on sister state judgment defendant may show he was induced by plaintiff's fraudulent conduct to come within jurisdiction of court rendering judgment. See 103 Am. St. Rep. 315, 319, note.

Distinguished in dissenting opinion in In re Culp, 2 Cal. App. 83, 83 Pac. 94, majority holding where Kansas divorce decree awarded wife custody of child, and later Kansas court modified decree by awarding child to grandfather, she may, on habeas corpus, attack modification by proof of lack of notice.

Syl. 3 (XI, 8). Foreign laws must be proved.

Approved in St. Louis etc. Ry. Co. v. Haist, 71 Ark. 265, 100 Am. St. Rep. 65, 72 S. W. 894, in action for death by wrongful act occurring in Louisiana, statute of latter state need not be set out in haec verba.

Syl. 5 (XI, 8). Sister state judgment—State laws.

See 113 Am. St. Rep. 873, note.

Syl. 6 (XI, 8). Judicial notice of state laws.

Approved in Allen v. Alleghany Co., 196 U. S. 464, 49 L. 555, 25 Sup. Ct. 311, whether or not corporate contract entered into in contravention of statutes regulating foreign corporations was void and unenforceable in other states does not present federal question; Allgair v. Fisher, 143 Fed. 963, where, pending action in district court to review referee's order, consent order permitting creditors to become parties made, jurisdiction to set aside referee's order not questionable because of lack of right in petitioner to seek review; Leathe v. Thomas, 218 Ill. 253, 75 N. E. 812, setoff is defense to action on foreign judgment rendered in state where setoffs are not allowed in actions on judgments; Erwin v. Southern Ry., 71 S. C. 230, 50 S. E. 779, in order to make record of court of limited jurisdiction in garnishee proceedings in other state binding, it must be affirmatively shown that garnishee, a foreign corporation, submitted itself to such jurisdiction; Thomas v. Board of Trustees, 195 U. S. 214, 49 L. 165, 25 Sup. Ct. 24, arguendo.

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Syl. 7 (XI, 9). Joint foreign judgment—Pleading.

Distinguished in East Baltimore Lum. Co. v. K'Nessitt Israel etc. Congregation, 100 Md. 690, 62 Atl. 576, where defendants jointly sued as original promisors and record failed to show misjoinder raised, judgment against all cannot be reversed as to some and affirmed as to others.

116 U. S. 11, 12, 29 L. 550, MARVEL v. MERRITT.

Syl. 1 (XI, 9). Statutory construction—Nontechnical words.

Distinguished in Burdock v. Dillon, 144 Fed. 740, word "mining" in Bankr. Act 1898, § 4b, as amended in 1903, includes quarrying of slate from open quarry.

116 U. S. 13-21, 29 L. 554, SAXONVILLE MILLS v. RUSSELL.

Syl. 2 (XI, 9). Construction of tariff act.

Approved in Brennan v. United States, 136 Fed. 747, 69 C. C. A. 395, limes in brine are free of duty under Act 1897, par. 556, Free List, § 2, and not dutiable as "limes."

116 U. S. 22-28, 29 L. 552, MILLER v. FOREE.

Syl. 1 (XI, 10). Patents—Application of known method.

Distinguished in Bryce Bros. Co. v. Seneca Glass Co., 140 Fed. 173, where invention is for etching machine, sale of product for two years prior to patent is not public use.

116 U. S. 28-33, 29 L. 542, UTAH ETC. RY. v. FISHER.

Syl. 1 (XI, 10). Territorial jurisdiction—Indian reservation.

Approved in Hollister v. United States, 145 Fed. 777, upholding Comp. St. Supp., 1905, p. 719, conferring jurisdiction on federal district courts in South Dakota over prosecutions for larceny committed on Indian reservations; Coey v. Cleghorn, 10 Idaho, 170, 109 Am. St. Rep. 199, 79 Pac. 74, where it is shown that party resides on Indian reservation in state and attachment is levied on his property situate on such reservation, claim that he is not resident of state fails; Gay v. Thomas, 5 Okl. 12, 46 Pac. 582, upholding taxation of cattle of nonresidents grazed on lands in Indian reservation leased from Indians. See 103 Am. St. Rep. 812, note.

Syl. 2 (XI, 10). Taxation—Property on Indian reservation.

Approved in Gay v. Thomas, 5 Okl. 14, 15, 46 Pac. 582, upholding taxation of cattle of nonresidents grazed on lands in Indian reservation leased from Indians.

116 U. S. 33-42, 29 L. 538, HOLGALI v. EATON.

Syl. 2 (XI, 11). Specific performance—Laches.

Approved in Patterson v. Hewitt, 195 U. S. 319, 49 L. 218, 25 Sup. Ct. 35, affirming 11 N. M. 33, 66 Pac. 562, 55 L. R. A. 658, and holding eight years' delay after right to deed of interest in mining claim has accrued by reason of contribution to expense necessary to patent defeats

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suit to enforce right where complainant contributed nothing further to development of mine; Cole v. Birmingham Union Ry. Co., 143 Ala. 435, 39 So. 405, barring suit by stockholder to set aside, for ultra vires, sale of property of street railway, ten years after transfer, property having meantime been sold to third party and mortgaged by latter.

Syl. 6 (XI, 11). Dismissal of original, retention of cross-bill.

Approved in Callahan v. Mercantile Trust Co., 188 Mass. 398, 74 N. E. 667, following rule.

116 U. S. 45-48, 29 L. 558, MACKALL v. RICHARDS.

Syl. 1 (XI, 11). Appeal—Decree conformable to mandate.

Approved in McClung v. Harris, 11 Okl. 65, 65 Pac. 942, following rule.

116 U. S. 48-53, 29 L. 570, LEE v. JOHNSON.

Syl. 1 (XI, 12). Collateral attack on land patent.

Approved in Meyers v. United States, 5 Okl. 185, 48 Pac. 189, upholding indictment for perjury committed in affidavit in land contest.

Syl. 3 (XI, 12). Conclusiveness of Land Department decisions.

Approved in Paine v. Foster, 9 Okl. 233, 244, 53 Pac. 115, 118, and Calhoun v. Violet, 4 Okl. 325, 47 Pac. 481, both following rule; Small v. Rakestraw, 196 U. S. 406, 49 L. 529, 25 Sup. Ct. 285, finding by Secretary of Interior that residence of homesteader for voting purposes was in precinct other than where land lies, not erroneous where entryman once voted in county other than where land lies; Estes v. Timmons, 199 U. S. 396, 50 L. 244, 26 Sup. Ct. 85, affirming 12 Okl. 544, 73 Pac. 305, and holding perjury on hearing before Land Department of contest over homestead entry is not ground for equitable relief against department's decision; Miller v. Margerie, 149 Fed. 697, applying rule to decision of Alaska townsite trustee; Gebo v. Clark Fork C. Min. Co., 30 Mont. 92, 93, 75 Pac. 860, holding insufficient complaint to hold patentee of coal lands trustee for plaintiff on mere allegation of filing of forged relinquishment of plaintiff's rights; Cagle v. Dunham, 14 Okl. 615, 625, 78 Pac. 562, 565, refusing to set aside land decision for perjury where notice given parties who appeared before department and were given full hearing; Cook v. McCord, 9 Okl. 210, 60 Pac. 500, applying rule to finding as to whether claimant has abandoned lot; Thornton v. Peery, 7 Okl. 449, 54 Pac. 652, allegation that successful party in land office introduced perjured testimony is insufficient to set aside department's findings in absence of allegation of lack of further evidence to support such findings; Parker v. Lynch, 7 Okl. 661, 56 Pac. 1092, one offering to file contest in land office which was rejected cannot sue to declare patentee, who was entryman at time of offer, trustee for his use; Black v. Jackson, 6 Okl. 754, 52 Pac. 407, where adverse claimants are residing on land and each claims under prior homestead settlement, loser before Land Department cannot claim right to continue residence for purpose of suit to declare trust against opponent;

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Meyers v. United States, 5 Okl. 182, 48 Pac. 189, upholding indictment for perjury committed in affidavit in land contest; Woodruff v. Wallace, 3 Okl. 361, 41 Pac. 359, district court may, by injunction, give exclusive possession to successful party in land office contest. See 104 Am. St. Rep. 697, note.

Distinguished in dissenting opinion in Paine v. Foster, 9 Okl. 262, 60 Pac. 25, majority following rule.

116 U. S. 54-55, 29 L. 535, SIMMERMON v. NEBRASKA.

Syl. 1 (XI, 13). Time to raise federal question.

Approved in Harding v. Illinois, 196 U. S. 84, 49 L. 396, 25 Sup. Ct. 176, neither petition for rehearing, petition for writ of error, assignments of error in federal supreme court nor certification of briefs by clerk of state court, cure failure to show federal question raised below.

116 U. S. 55-80, 29 L. 561, CANNON v. UNITED STATES.

Syl. 1 (XI, 13). Bigamy—Cohabitation defined.

Approved in United States v. Griego, 111 N. M. 401, 72 Pac. 22, adultery indictment charging married man with committing adultery by having unlawful intercourse is sufficient though word "sexual" omitted.

Syl. 5 (XI, 14). Indictment in words of statute.

Approved in United States v. Lake, 129 Fed. 501, upholding sufficiency of indictment against president of bankrupt corporation for making false oath to schedules.

116 U. S. 80-97, 29 L. 544, ROBERTS v. REILLY.

Syl. 3 (XI, 15). Federal habeas corpus—Extradition.

Approved in In re Kopel, 148 Fed. 506, upholding federal jurisdiction to issue habeas corpus though same petition denied by state court.

Syl. 4 (XI, 15). Requisites of extradition demand.

Approved in Farrell v. Hawley, 78 Conn. 153, 61 Atl. 504, 70 L. R. A. 686, averment in reply of one in custody under extradition warrant that no legal hearing was had to ascertain whether he was fugitive is insufficient.

Syl. 5 (XI, 15). Habeas corpus—Extradition—Sufficiency of indictment. See 112 Am. St. Rep. 106, note.

Syl. 6 (XI, 15). Extradition—Question of fact—Fugitive.

Approved in Dennison v. Christian, 196 U. S. 637, 49 L. 630, 25 Sup. Ct. 795, Munsey v. Clough, 196 U. S. 372, 49 L. 517, 25 Sup. Ct. 282, Dodge v. Ellis, 195 U. S. 626, 49 L. 350, 25 Sup. Ct. 791, In re Letcher, 145 Cal. 564, 79 Pac. 65, and State v. Clough, 72 N. H. 179, 55 Atl. 555, 67 L. R. A. 946, all following rule; Benson v. Henkel, 198 U. S. 10, 49 L. 922, 25 Sup. Ct. 569, objection to indictment for bribing federal officer to reveal contents of reports pertaining to Land Department in-

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vestigation of land frauds are unavailable in proceedings before commissioner for removal of accused to another federal district. See 112 Am. St. Rep. 121, 125, note.

Syl. 7 (XI, 15). Extradition—Certified copy of laws.

See 112 Am. St. Rep. 126, 138, 141, note.

Syl. 10 (XI, 16). Extradition—Offense against asylum state.

See 112 Am. St. Rep. 115, note.

Syl. 11 (XI, 16). Extradition—Fugitive defined.

Approved in Hughes v. Pflanz, 138 Fed. 984, following rule; In re Bruce, 132 Fed. 391, 393, where indicted person resided in state for year thereafter but removed to another state on business and was thereafter temporarily in state from time to time but not exceeding eighteen months in all, he was within exception of limitation statute.

116 U. S. 98-103, 29 L. 559, CALL v. PALMER.

Syl. 1 (XI, 16). Law governing notes.

Approved in In re Worth, 130 Fed. 930, under Iowa Code 1897, § 3041, creditors of bankrupt cannot set up defense of usury against claim of another creditor; Benjamin Bank v. Doherty, 42 Wash. 328, 84 Pac. 875, note valid where made not subject to Washington usury laws because secured by mortgage on property in this state.

116 U. S. 104-108, 29 L. 550, UNITED STATES v. MOONEY.

Syl. 3 (XI, 18). District court's jurisdiction over penalties.

Approved in Lederer v. Ferris, 149 Fed. 251, suit arising under copyright laws may be brought in any district in which defendant can be found and served with process.

116 U. S. 108-113, 29 L. 583, COYLE v. DAVIS.

Syl. 1 (XI, 18). Parol to show deed a mortgage.

Approved in Neely v. Boyd, 145 Fed. 174, holding evidence insufficient to show parol agreement by purchaser at execution sale to hold title for benefit of judgment defendant and to permit latter to redeem at any time.

Distinguished in dissenting opinion in Stuart v. Hauser, 9 Idaho, 73, 72 Pac. 726, majority holding suit by grantor to have deed absolute declared mortgage, finding that deed not intended as mortgage not disturbed on appeal where evidence conflicts.

116 U. S. 113-131, 29 L. 575, LIVERPOOL ETC. INS. CO. v. GUNTHER.

Syl. 1 (XI, 18). Evidence on obscure answer.

Approved in Black v. Teeter, 1 Alaska, 564, in ejectment where evidence of second and later location by plaintiff was unobjected to, though

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not specially pleaded, and jury found for plaintiff on such location, instruction submitting last location not ground for new trial.

116 U. S. 131-135, 29 L. 587, FISKE v. JEFFERSON POLICE JURY.

Syl. 1 (XI, 19). Change or abolition of elective office.

Approved in Board etc. of Perry County v. Lindeman, 165 Ind. 191, 73 N. E. 914, upholding Acts 1903, p. 40, relating to salaries of officers; Gibbs v. Manchester, 73 N. H. 267, 61 Atl. 129, where police commissioners removed policeman without charges or hearing, city not liable for acts of commissioners.

116 U. S. 138-142, 29 L. 589, SAN MATEO CO. v. SOUTHERN PAC. R. R.

Syl. 1 (XI, 20). Dismissal of appeal—Payment of judgment.

Approved in Signor v. Clark, 13 N. D. 46, 99 N. W. 72, following rule.

116 U. S. 142-145, 29 L. 581, HEWITT v. FILBERT.

Syl. 1 (XI, 20). Appeal—Necessity for citation.

Approved in Lockman v. Lang, 132 Fed. 4, where appeal allowed by taking security in time and transcript filed and case docketed, failure to issue citation within time for appeal is no ground for dismissal.

Distinguished in Simpson v. First Nat. Bank, 129 Fed. 260, 261, 63 C. C. A. 371, where appeal allowed on condition that petitioner give bond in fixed amount, filing of assignment of errors at time of giving and acceptance of bond is in time.

116 U. S. 145-154, 29 L. 572, McCLURE v. UNITED STATES.

Syl. 1 (XI, 21). Court of claims findings conclusive.

Approved in United States Nat. Bank v. Bank of Guthrie, 6 Okl. 180, 51 Pac. 123, refusing to review findings where it cannot be said there was no supporting evidence.

116 U. S. 161-167, 29 L. 591, WINCHESTER ETC. MFG. CO. v. CREARY.

Syl. 1 (XI, 22). Vendor's declarations after sale.

Approved in Meyer v. Munro, 9 Idaho, 53, 71 Pac. 971, mortgagor's declarations made after mortgage as to purpose in making mortgage are inadmissible unless mortgagee shown to be party to fraud.

Distinguished in Ball v. United States, 147 Fed. 40, failure to charge that evidence of prior conviction of accused was admissible only as tending to affect his credibility as witness not error in absence of request therefor.

Syl. 4 (XI, 22). Agent's declarations.

Approved in Sweeney v. Sweeney, 119 Ga. 82, 46 S. E. 78, declarations of agent in possession of realty as manager are inadmissible to disparage principal's title.

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116 U. S. 167-186, 29 L. 601, SMITH v. WHITNEY.

Syl. 2 (XI, 23). Prohibition matter of right.

Approved in Alexander v. Crollott, 199 U. S. 580, 50 L. 317, 26 Sup. Ct. 161, upholding denial of prohibition against justice of peace in forcible entry where there is right of appeal; Kilty v. Railroad Commissioners, 184 Mass. 311, 68 N. E. 236, refusal of prohibition to restrain railroad commissioners from issuing certificate of compliance at suit of stranger is not reviewable; dissenting opinion in State v. Godfrey, 54 W. Va. 77, 46 S. E. 194, majority granting prohibition against prosecution under void city gambling ordinance.

Syl. 3 (XI, 23). Prohibition is law remedy.

See 111 Am. St. Rep. 932, note.

Syl. 4 (XI, 23). Prohibition restrains judicial functions only.

Approved in Lodge v. Fletcher, 184 Mass. 240, 68 N. E. 204, denying prohibition to restrain aldermen from hearing evidence touching misconduct of city officers.

Syl. 5 (XI, 23). Prohibition, to whom directed.

See 111 Am. St. Rep. 971, note.

Syl. 6 (XI, 23). Prohibition against court-martial.

Approved in United States v. Praeger, 149 Fed. 485, where civilian witness refused to answer questions before court-martial because answers might tend to incriminate him, decision of such court as to propriety of questions not conclusive in civil courts; In re Scott, 144 Fed. 81, denying habeas corpus on petition of minor who enlisted in navy where at time of petition minor was on trial before court-martial for military offense.

Syl. 7 (XI, 24). Army regulations sanctioned by law.

Approved in Peters v. United States, 2 Okl. 123, 33 Pac. 1033, false swearing before receiver in contest under general rules of land office is perjury under Rev. St., § 5392.

116 U. S. 193-197, 29 L. 595, WEBB v. BARNWALL.

Syl. 1 (XI, 24). Action to restrain ejectment judgment.

Approved in O'Connor v. O'Connor, 146 Fed. 997, federal suit to set aside federal judgment at law is within federal jurisdiction irrespective of citizenship where defendants were parties to original suit or in privity with parties.

116 U. S. 200-206, 29 L. 657, KINGS CO. SAV. INST. v. BLAIR.

Syl. 1 (XI, 25). Recovery of revenue taxes—Time to claim.

Cited in Christie-Street Com. Co. v. United States, 129 Fed. 508, arguendo.

Distinguished in Grier v. Tucker, 150 Fed. 661, one assessed with special tax under oleomargarine law of 1886, as dealer, who before pay-

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ing tax made application for abatement of same, which was refused, need not again appeal before suing to recover payment.

116 U. S. 219-226, 29 L. 608, MILWAUKEE v. KOEFFLER.

Syl. 1 (XI, 25). Injunction to restrain personalty tax.

Approved in Illinois Life Ins. Co. v. Neuman, 141 Fed. 451, refusing to enjoin collection of tax levied under authority of state statute alleged to be illegal.

116 U. S. 237-252, 29 L. 659, BROWN v. DAVIS.

Syl. 2 (XI, 26). Patent reissue—Infringement.

Approved in Scott v. Fisher etc. Mach. Co., 139 Fed. 145, Bellis patent No. 561,559, for improvements in knitting machines, not infringed by machine of Fisher patent No. 656,535.

116 U. S. 252-269, 29 L. 615, PRESSER v. ILLINOIS.

Syl. 3 (XI, 27). Second amendment inapplicable to states.

Approved in Ex parte Munn, 140 Fed. 783, federal court cannot on habeas corpus discharge one confined for contempt of state court for refusal to answer questions on ground that answers might incriminate him; St. Louis etc. Ry. Co. v. Davis, 132 Fed. 632, federal court cannot enjoin state officers from contemplated act alleged to violate fifth amendment; In re Briggs, 135 N. C. 121, 47 S. E. 404, upholding Code, § 1215, providing against excusing participants from testifying in gambling cases.

116 U. S. 289-306, 29 L. 620, MOBILE v. WATSON.

Syl. 2 (XI, 29). Debts of old municipality.

Approved in Pepin Tp. v. Sage, 129 Fed. 660, 64 C. C. A. 169, and City of Guthrie v. Wylie, 6 Okl. 66, 55 Pac. 105, both following rule; Graham v. Folsom, 200 U. S. 252, 253, 50 L. 468, 469, 26 Sup. Ct. 245, affirming Ex parte Folsom, 131 Fed. 506, and granting mandamus to compel county officers, through whom taxes are assessed and levied, to levy tax to pay judgment on township bonds, though corporate existence of township destroyed by state constitution; Planters' etc. Bank v. Huiett Tp., 132 Fed. 628, applying rule where township transferred to new county after issuing bonds; Susong v. Cokesbury Tp., 132 Fed. 568, though in transferring township into new county after it had issued bonds small part left in old county, that in new county still taxable for bonds; Taylor v. Pine Grove Tp., 132 Fed. 566, where, after issuance of township bonds, all but small part of township included in new county, and boundaries changed so as to include new territory, all property in new township was liable for bonds; Board Co. Commrs. Greer Co. v. Clarke, 12 Okl. 212, 70 Pac. 211, Greer County, Oklahoma, is liable for debts created by Greer County, Texas, prior to transfer of territory to Oklahoma; School Dist. No. 76 v. Capital Nat. Bank, 7 Okl. 50, 4 Pac. 311, where township under school laws of 1890 erected schoolhouse, its debts contracted for such purpose are not township liability; Blackburn v. Oklahoma City, 1 Okl. 295, 31

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Pac. 783, Oklahoma City clerk may recover from de jure corporation for services rendered city during de facto existence; City of Guthrie v. Territory, 1 Okl. 202, 31 Pac. 194, 11 L. R. A. 418, holding city succeeding to rights and property of village is liable for debts of village fixed by legislature.

Distinguished in Folsom v. Greenwood Co., 130 Fed. 733, county which under state laws can levy taxes only for specified purposes is not liable for township bonds issued before creation of county by township, which was corporate body in another county; Wichman v. Placerville, 147 Cal. 164, 81 Pac. 538, where city authorized by special statute to issue bonds for certain purpose, and new charter contained no such authority, subsequent issue under old act was void.

Syl. 3 (XI, 29). Preservation of remedies for city debts.

Approved in McKie v. Rose, 140 Fed. 148, where town authorized to appropriate and raise certain sum in construction of steamboat and issue notes therefor, and plaintiff secured judgment for portion of cost of boat, it is no defense to mandamus to compel levy of tax to pay judgment that town had issued notes to full statutory limit and used proceeds; Ft. Madison v. Ft. Madison Water Co., 134 Fed. 216, 67 C. C. A. 142, Iowa Code, 1897, § 1305, providing for assessment of property at twenty-five per cent of actual value, is void as affecting ability of city to pay hydrant rentals under contract made when law required assessment at true cash value.

116 U. S. 307-347, 29 L. 636, STONE v. FARMERS' LOAN & TRUST CO. (RAILROAD COMMISSION CASES).

Syl. 1 (XI, 30). State railroad rate regulation.

Approved in People v. Chicago etc. Ry. Co., 223 Ill. 592, 79 N. E. 147, railroad commission act of 1905, requiring railroads doing business in state to make annual report, applies to foreign corporations; State v. Bryan, 50 Fla. 371, 39 So. 954, arguendo.

Syl. 2 (XI, 31). Railroad rate regulation—Exemption.

Approved in New York v. State Board of Tax Commrs., 199 U. S. 42, 50 L. 772, 25 Sup. Ct. 715, special franchise imposed by N. Y. Laws, 1899, c. 712, does not impair obligation of contract by which railroad granted street railway franchise in consideration of payment of certain sum or percentage of earnings; Rochester v. Rochester Ry. Co., 182 N. Y. 115, 74 N. E. 958, 70 L. R. A. 773, immunity to contribution to expense of new pavements conferred by statute to street railroad is revocable at will. See 105 Am. St. Rep. 703, note.

Syl. 6 (XI, 33). State regulation of interstate road.

Approved in Russell v. St. Louis etc. Ry. Co., 71 Ark. 457, 75 S. W. 728, foreign railroad complying with Acts 1889, p. 43, may exercise right of eminent domain.

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116 U. S. 356-366, 29 L. 633, ANDERSON v. SANTA ANNA.

Syl. 1 (XI, 34). Ratification of municipal bonds.

Approved in Potter v. Lainhart, 44 Fla. 668, 33 So. 258, upholding Acts 1901, c. 4912, to validate prior county improvement bonds.

Syl. 2 (XI, 34). Following state statutory construction.

Approved in Great Southern etc. Hotel Co. v. Jones, 193 U. S. 544, 48 L. 786, 24 Sup. Ct. 576, upholding Ohio statute relating to mechanic's lien, no state decision respecting its validity having been rendered till after rights of parties fixed by contract; Board of Commrs. v. Tollman, 145 Fed. 763, giving independent construction to state constitution alleged to be violated by statute under which aid bonds issued, where no state decision construing constitution at time of issuance.

116 U. S. 366-380, 29 L. 652, LITTLE v. HACKETT.

Syl. 1 (XI, 36). Recovery for other's negligence.

Approved in St. Louis etc. Ry. Co. v. Chapman, 140 Fed. 134, denying liability of railroad for death of one killed by backing engine while crossing tracks. See 110 Am. St. Rep. 279, note.

Syl. 3 (XI, 36). Imputed negligence of passenger.

Approved in Sluder v. St. Louis Transit Co., 189 Mo. 140, 88 S. W. 655, following rule; The Hamilton, 146 Fed. 727, where two vessels collided as result of joint negligence, negligence of one is no defense to liability of other; Quinette v. Bisso, 136 Fed. 839, 69 C. C. A. 825, one entering skiff owned and rowed by others to be taken across river, who was run down by tug and drowned, not contributorily negligent because of negligence of oarsman; St. Louis etc. R. R. Co. v. McFall, 75 Ark. 35, 86 S. W. 826, where conductor killed in collision by negligence of engineer at point where he could not control latter's actions by signal, negligence of engineer not imputable to him; Duval v. Atlantic Coast Line R. Co., 134 N. C. 338, 339, 340, 346, 101 Am. St. Rep. 830, 46 S. E. 753, 755, 65 L. R. A. 722, negligence of one with whom plaintiff riding as guest in buggy struck by train not imputable to plaintiff. See 110 Am. St. Rep. 290, 292, 293, note.

116 U. S. 380-386, 29 L. 593, MOWER v. FLETCHER.

Syl. 1 (XI, 37). Pre-emption of disputed school lands.

Approved in Clipper Min. Co. v. Eli Min. etc. Co., 194 U. S. 231, 48 L. 952, 24 Sup. Ct. 632, entry, against will of placer locator, on prior valid placer location, to prospect for unknown lodes, initiates no title to lode claims located in placer claim; Smith v. Love, 49 Fla. 242, 38 So. 380, holding plea in ejectment sufficient to show plaintiff held lands in trust for defendant.

116 U. S. 401, 402, 29 L. 676, EX PARTE BROWN.

Syl. 1 (XI, 39). Mandamus to review dismissal.

Approved in State v. District Court, 13 N. D. 219, 100 N. W. 249, denying mandamus to review dismissal of prosecution in name of state to

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remove sheriff in which motion to suspend defendant pending suit was made.

116 U. S. 404-408, 29 L. 680, GIBBINS v. DISTRICT OF COLUMBIA.

Syl. 2 (XI, 40). Tax regulation in District of Columbia.

Approved in Binns v. United States, 194 U. S. 492, 48 L. 1089, 24 Sup. Ct. 816, license fees on certain businesses imposed by Alaska Pen. Code, § 460, are not excises to pay debts within Const., art. 1, § 8; Kingsley v. Merrill, 122 Wis. 201, 99 N. W. 1049, 67 L. R. A. 200, upholding Rev. St. 1898, § 1036, making debts due from solvent debtors subject to taxation.

116 U. S. 408-410, 29 L. 679, FLETCHER v. HAMLET.

Syl. 2 (XI, 40). Removal of cause by firm.

Approved in Blackburn v. Blackburn, 142 Fed. 903, action not removable under Act 1888, § 2, cl. 2, where there is no separable controversy unless all defendants are nonresidents and join in removal petition.

116 U. S. 410-418, 29 L. 671, EUREKA ETC. CANAL CO. v. SUPERIOR COURT OF YUBA COUNTY.

Syl. 2 (XI, 40). Contempt—Service on attorney for corporation.

Approved in Christensen Eng. Co. v. Westinghouse Air-Brake Co., 135 Fed. 778, 68 C. C. A. 476, upholding sufficiency of service of notice of application for attachment for contempt for violation of injunction given to defendant's solicitors and mailed to defendant and returned marked "Refused."

116 U. S. 418-423, 39 L. 669, O'REILLY v. CAMPBELL.

Syl. 2 (XI, 41). Mining contest appeal—Objection of alienage.

Approved in Matlock v. Stone, 77 Ark. 200, 91 S. W. 555, limitations cannot be first raised on appeal of action on adverse to application for patent to mining claim.

Syl. 4 (XI, 41). Mines—Discovery and development as elements.

Approved in Creede etc. Milling Co. v. Uinta Tunnel etc. Co., 196 U. S. 349, 49 L. 509, 25 Sup. Ct. 266, discovery of vein or lode before other steps are taken to perfect location is not required by Rev. St., § 2320.

Syl. 5 (XI, 41). Mines—Location of vein by notice.

Cited in dissenting opinion in Lily Min. Co. v. Kellogg, 27 Utah, 124, 74 Pac. 522, arguendo,

116 U. S. 427-435, 29 L. 681, COFFEY v. UNITED STATES.

Syl. 4 (XI, 42). Internal revenue—Information—Particulars of fraud.

Approved in United States v. Manufacturing Apparatus etc. Co., 141 Fed. 476, information for forfeiture of oleomargarine plant under Act 1886, § 17, is sufficient if charging in statutory language that claimant

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was manufacturing oleomargarine and attempted to defraud government of tax on oleomargarine produced by it.

116 U. S. 436-445, 29 L. 684, COFFEY v. UNITED STATES.

Syl. 4 (XI, 42). Revenue—Acquittal bars forfeiture.

Approved in United States v. Donaldson-Shulz Co., 142 Fed. 301, acquittal for obstructing navigable stream bars suit to compel removal of obstruction; United States v. Seattle Brewing etc. Co., 135 Fed. 598, 599, acquittal of transporting casks containing bottled beer falsely marked as containing soda water is bar to action for forfeiture and penalty imposed by Rev. St., § 3449; United States v. Lot of Precious Stones, 134 Fed. 63, 68 C. C. A. 1, where importer and wife indicted for fraudulent importation, acquittal of former is bar as to him, but nolle prosequi of latter, is not bar to forfeiture proceedings against wife; State v. Cobb, 123 Iowa, 628, 99 N. W. 300, acquittal of violation of statute prohibiting illegal keeping of liquor for sale bars proceedings to condemn liquor; People v. Albers, 137 Mich. 685, 100 N. W. 910, where defendant acquitted of bribery in pursuance of conspiracy to obtain particular action by city council, jurors drawn on subsequent indictment of defendant for false swearing on previous prosecution not biased, though they had sat on trial of other councilman and convicted him. See 103 Am. St. Rep. 21, 26, note.

Distinguished in United States Fidelity etc. Co. v. United States, 150 Fed. 554, conviction of Indian agent for malfeasance in office no bar to suit on bond; United States v. Donaldson-Shultz Co., 148 Fed. 583, 584, 585, acquittal of violation of Act 1899, § 10, for obstructing navigable stream not bar to equity suit to compel removal of obstruction; State v. Vandemark, 77 Conn. 204, 58 Atl. 717, acquittal on prosecution for conspiracy to assault, in which defendant testified as to his whereabouts, guilt turning on such question, is no bar to prosecution for perjury in giving such testimony; State v. Corron, 73 N. H. 448, 62 Atl. 1047, acquittal of liquor dealer of violation of liquor law is not res adjudicata of action for breach of bond.

116 U. S. 446-461, 29 L. 691, WALLING v. MICHIGAN.

Syl. 1 (XI, 43). Taxing liquor sales by nonresidents.

Approved in Sloman v. William D. C. Moebs Co., 139 Mich. 337, 102 N. W. 856, following rule; Bacon v. Locke, 42 Wash. 217, 83 Pac. 722, holding void laws 1905, pp. 372, 373, taxing peddlers.

Syl. 4 (XI, 44). Commerce—Nonaction by Congress.

Approved in dissenting opinion in Cox v. Texas, 202 U. S. 452, 50 L. 1102, 26 Sup. Ct. 671, majority upholding Tex. Rev. Civ. St., art. 5060, et seq., taxing liquor dealers and exempting wines produced from domestic grapes while in hands of manufacturers; dissenting opinion in Pabst Brewing Co. v. Crenshaw, 198 U. S. 44, 49 L. 936, 25 Sup. Ct. 552, majority upholding state statute imposing inspection fee on beer shipped from other states.

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Distinguished in Cox v. Texas, 202 U. S. 451, 50 L. 1101, 26 Sup. Ct. 671, upholding Tex. Rev. Civ. St. 1895, art. 5060, et seq., taxing liquor dealers and exempting wines produced from domestic grapes while in hands of manufacturer.

116 U. S. 491-499, 29 L. 703, DUNPHY v. RYAN.

Syl. 2 (XI, 48). Statute of frauds—Contract unenforceable.

Approved in Jones v. Patrick, 140 Fed. 405, verbal agreement to cooperate in finding purchaser at advanced price for mine on which defendant held option and to share in profits is not within statute of frauds.

Syl. 4 (XI, 48). Assumpsit—Payment under oral contract.

See 102 Am. St. Rep. 236, note.

(XI, 47.) Miscellaneous. Cited in Stevens v. McChrystal, 150 Fed. 88, where application for mining claim contested and later contest dismissed under agreement of applicant to convey claim to contestant on payment of sum after procurement of patent, no trust created.

116 U. S. 517-529, 29 L. 715, COE v. ERROL.

Syl. 1 (XI, 49). Scope of state's jurisdiction.

Approved in State v. Fidelity etc. Co., 35 Tex. Civ. 217, 80 S. W. 546, following rule.

Syl. 2 (XI, 49). Tax on nonresident's personalty.

Approved in State v. Fidelity etc. Co., 35 Tex. Civ. 232, 80 S. W. 554, following rule; Carstairs v. Cochran, 193 U. S. 16, 48 L. 597, 24 Sup. Ct. 318, upholding Maryland statute taxing liquors in bonded warehouses and requiring warehouseman to pay taxes and giving him lien on property therefor; Buck v. Beach, 164 Ind. 50, 108 Am. St. Rep. 272, 71 N. E. 968, applying rule to taxation of notes; Commonwealth v. Union etc. Transit Co., 118 Ky. 141, 80 S. W. 492, upholding Ky. St. 1903, § 4020, taxing personalty of domestic corporation, as to corporation owning cars outside of state, though corporation owning cars in use out of state is not taxed therewith in state; Nathan v. Spokane Co., 35 Wash. 33, 76 Pac. 523, 65 L. R. A. 336, determining validity of Laws 1899, p. 295, § 12, relating to taxation of goods brought into any county after March 1st of each year to be sold without intention of engaging in permanent trade.

Distinguished in Union etc. Transit Co. v. Kentucky, 199 U. S. 206, 50 L. 154, 26 Sup. Ct. 36, due process is denied Kentucky corporation by tax assessed under Ky. St., § 4020, on rolling stock permanently located and used in other states.

Syl. 4 (XI, 49). Commerce—State tax on exports.

Approved in United States v. Geddes, 131 Fed. 453, 454, 65 C. C. A. 320, holding road operated wholly in state and connecting with interstate road not engaged in interstate traffic under safety appliance act where it required separate bill of lading for through freight; Merchants' Transf. Co. v. Board of Review, 128 Iowa, 740, 105 N. W. 213, mer-

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chandise of nonresident sellers consigned to warehouseman in state and stored to await future delivery on sales, is assessable by local authorities; Ames v. Kirby, 71 N. J. L. 446, 59 Atl. 560, holding anti-poolroom statute violated by keeping resort for betting by telegraph with persons outside of state; American Steel etc. Co. v. Speed, 110 Tenn. 546, 100 Am. St. Rep. 814, 75 S. W. 1042, upholding state tax on goods shipped from outside state and held in storage to await later sales. See 98 Am. St. Rep. 620, note.

Distinguished in United States v. Great Northern Ry. Co., 145 Fed. 439, act of 1893, as amended, requiring automatic couplers on cars of interstate carriers, applies to cars of interstate railroad at all times while in use on the road; Gulf etc. Ry. Co. v. State, 97 Tex. 286, 78 S. W. 499, construing shipment of grain from outside state as being within jurisdiction of state railroad commission.

Syl. 5 (XI, 50). State tax on goods for export.

Approved in Delaware etc. R. R. Co. v. Pennsylvania, 198 U. S. 352, 49 L. 1081, 25 Sup. Ct. 669, including in appraisement of capital stock of corporation for purposes of local taxation, value of coal mined in state situated in another state and there awaiting sale, illegal; Johnson v. Southern Pac. Co., 196 U. S. 22, 49 L. 371, 25 Sup. Ct. 158, dining-car in constant use is, while waiting for train to be made up for interstate trip, within automatic coupler act of 1893.

116 U. S. 529-538, 29 L. 712, IRON SILVER MIN. CO. v. CHEESMAN.

Syl. 3 (XI, 51). Mines—Vein defined.

Approved in Grand Central Min. Co. v. Mammoth Min. Co., 29 Utah, 574, 582, 83 Pac. 676, 679, following rule.

116 U. S. 550-566, 29 L. 729, BARRY v. EDMUNDS.

Syl. 3 (XI, 53). Challenging federal jurisdiction.

Approved in Gaddie v. Mann, 147 Fed. 959, defendant challenging jurisdiction alleging change of complainant's domicile must show residence in new locality and intention to remain; McCarthy v. American Thread Co., 143 Fed. 680, circuit court will not require payment of costs by plaintiff recovering less than $500, unless jurisdictional averment of amount in declaration was merely colorable; Pennsylvania Co. v. Bay, 138 Fed. 205, upholding jurisdiction over bill to enjoin ticket-scalping, where business alleged to be worth over $5,000, though answer alleged amount less than $2,000.

Syl. 4 (XI, 53). Amount in controversy—Demand.

Approved in Spaulding v. Evenson, 149 Fed. 916, upholding jurisdiction where bill to restrain interference with business alleges value in dispute, exclusive of interest and costs, exceeds $25,000, and that defendant's acts have caused damage in more than such sum; Barber v. Boston etc. Co., 145 Fed. 52, action in case for $2,000 damages for negligence not removable, though actual damages alleged to be

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greater; State Bank of Chicago v. Cox, 143 Fed. 92, upholding jurisdiction where declaration contained common counts and special count each alleging amount to be $5,000, and plaintiff recovered over $2,000.

116 U. S. 572-584, 29 L. 735, ROYALL v. VIRGINIA.

Syl. 1 (XI, 55). Attorney's admission fee is tax.

Approved in Camden etc. Ry. Co. v. Catlettsburg, 129 Fed. 430, denying federal jurisdiction to enjoin criminal proceedings by city for violation of ordinance.

116 U. S. 588-592, 29 L. 725, HARTOG v. MEMORY.

Syl. 2 (XI, 56). Pleading adverse citizenship—Dismissal.

Approved in Every Evening Printing Co. v. Butler, 144 Fed. 918, where proper allegations showing diverse citizenship are made in declaration, allegations of plaintiff's citizenship are controvertible only by proper pleadings supported by proof.

Syl. 4 (XI, 57). Inquiry into jurisdiction sua sponte.

Approved in Briggs v. Traders' Co., 145 Fed. 257, federal court's lack of jurisdiction may be raised by any pleading; Pennsylvania Co. v. Bay, 138 Fed. 205, bill to enjoin ticket-scalping alleging business worth $500, treated as true, though answer alleges amount in controversy less than $2,000, till defendant sustains burden of showing lack of jurisdictional amount; Gaddie v. Mann, 147 Fed. 959, arguendo.

Distinguished in Kirven v. Virginia-Carolina Chemical Co., 145 Fed. 291, objection to federal jurisdiction where dependent on question of fact and taken by answer should be submitted to jury, as independent issue.

116 U. S. 593-598, 29 L. 723, SHEPHARD v. CARRIGAN.

Syl. 1 (XI), 57). Patents—Introduction of new elements in claim.

Approved in Cimiotti Unhairing Co. v. American Fur Refining Co., 198 U. S. 410, 49 L. 1105, 25 Sup. Ct. 697, holding Sutton patent No. 383, 358, for fur-plucking machine, not infringed; Universal Brush Co. v. Sonn, 146 Fed. 531, Morrison patent No. 717,014, for method of making brushes, infringed by method of Sonn patent No. 791,510; Williams Calk Co. v. Kemmerer, 145 Fed. 930, limiting Williams patent No. 666,583, for horseshoe calk, and holding it not infringed; Welsback Light Co. v. Cremo etc. Light Co., 145 Fed. 524, Heald patent No. 423,317, for appliance for use with incandescent gas lamps, limited and not infringed; Victor Talking Mach. Co. v. American Graphophone Co., 145 Fed. 191, construing Berliner patent No. 548,623, for sound records; Avery v. Case Plow Works, 139 Fed. 885, Avery patent No. 650,771, claims 7 and 8 for plow, limited and not infringed; Rembert etc. Compress Co. v. American Cotton Co., 129 Fed. 368, 369, 64 C. C. A. 25, Rembert patent No. 441,022, for method of baling cotton, limited and not infringed by mechanism of Graves patent No. 473,144.

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116 U. S. 599-605, 29 L. 740, MING v. WOODFOLK.

Syl. 1 (XI, 59). Elements of action of deceit.

Approved in Pittsburgh etc. Trust Co. v. Northern etc. Ins. Co., 148 Fed. 675, statements furnished by officers of insurance company in negotiations for sale of its business, though incorrect, do not support action for deceit where they were prepared by employees for company's own use; Kimber v. Young, 137 Fed. 747, 748, 70 C. C. A. 178, applying rule where on sale of corporate bonds defendant said he knew bonds good and would be paid and that they were preferred securities; Stratton's Independence v. Dines, 135 Fed. 458, 68 C. C. A. 161, where defendant sold mine to plaintiff for its stock and then contracted with another for sale of stock on commission, profit made by defendant on sale of stock is not basis for action for deceit in sale of mine; Lynch v. United States, 13 Okl. 153, 73 Pac. 1099, where homesteader made final proof and paid government highest price at which land could be sold, United States cannot sue to cancel patent though patentee committed perjury in obtaining title.

116 U. S. 609-615, 29 L. 742, JONES v. SIMPSON.

Syl. 3 (XI, 60). Fraudulent conveyance—Vendee's bad faith.

Approved in United States v. Detroit Timber etc. Co., 200 U. S. 332, 50 L. 503, 26 Sup. Ct. 282, purchaser of lumber company's property is not chargeable with wrongful character, as against government, of conveyances of standing timber, which might have been gained by investigation of books and papers of company turned over as evidence of titles; Reed v. Munn, 148 Fed. 756, determining effect of notice of outstanding equitable interest on title of purchaser; United States v. Detroit Timber etc. Co., 131 Fed. 674, where vendor presents conveyances to himself prima facie valid and assures purchaser that title under them is perfect, purchaser need not investigate further; Floyd-Jones v. Anderson, 30 Mont. 362, 76 Pac. 755, where member of building and loan association has made full settlement and withdrawn therefrom, such settlement and withdrawal cannot be set aside by society without showing fraud.

116 U. S. 616-641, 29 L. 746, BOYD v. UNITED STATES.

Syl. 1 (XI, 60). Proof of allegations by private papers.

Distinguished in Lawrence v. State, 103 Md. 34, 35, 37, 63 Atl. 103, 104, in prosecution for false pretenses, on issue as to worth of paper purporting to be certificate of deposit issued by trust company, certificate of deposit book seized by officers is admissible; State v. Krinski, 78 Vt. 165, 62 Atl. 37, on prosecution for keeping liquor without license, liquors illegally seized are admissible; State v. Royce, 38 Wash. 116, 117, 80 Pac. 270, in burglary prosecution pawn ticket for typewriter stolen at time of burglary is admissible, though taken from defendant by police.

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Syl. 2 (XI, 60). Seizure of private papers.

Approved in Hale v. Henkel, 201 U. S. 71, 73, 76, 50 L. 664, 665, 666, 26 Sup. Ct. 370, determining right of officer of corporation to refuse to produce books before grand jury investigating violation of anti-trust law; Ballmann v. Fagin, 200 U. S. 195, 50 L. 437, 26 Sup. Ct. 212, upholding privilege of witness where cash-book sought by grand jury investigating criminal liability of national bank employee for disappearance of cash might disclose owner's liability for running bucket-shop; Edelstein v. United States, 149 Fed. 642, false oath punishable under Bankr. Act, § 29, includes examination of bankrupt before referee on examination of specifications filed against discharge; United States v. Praeger, 149 Fed. 483, 484, refusal of witness before court-martial to answer questions on advice of counsel that answer might subject him to prosecution is not violation of Comp. St. 1901, p. 965; United States v. Collins, 145 Fed. 711, claim of privilege for failure to produce books as required by subpoena insufficient when based solely on statement of claimant that books will tend to incriminate him and that he has not been sworn as witness; State v. Sheridan, 121 Iowa, 167, 96 N. W. 731, article obtained by search of defendant's house under search-warrant issued without legal authority is inadmissible against him; Woods v. Cottrell, 55 W. Va. 481, 104 Am. St. Rep. 1004, 47 S. E. 277, 65 L. R. A. 616, justice issuing warrant for arrest of one for keeping slot machine as gaming table, and to seize same, and who binds over accused to appear before criminal court, and orders constable to turn over machine to clerk of latter court, acts within jurisdiction; dissenting opinion in In re Moser, 138 Mich. 328, 110 Am. St. Rep. 315, 101 N. W. 598, 69 L. R. A. 900, majority holding president of corporation subpoenaed by grand jury investigating bribery of city officials in contract between city and corporation cannot refuse to produce books where he was not connected with corporation at time of contract. See notes, 101 Am. St. Rep. 329, 330, and 98 Am. St. Rep. 687.

Distinguished in In re Moser, 138 Mich. 313, 110 Am. St. Rep. 315, 101 N. W. 592, 69 L. R. A. 900, president of corporation subpoenaed by grand jury investigating bribery of officials in contract between city and corporation cannot refuse to produce books where he was not member of corporation at time of contract; State v. Strait, 94 Minn. 388, 389, 102 N. W. 913, 914, where private banker accused of receiving deposits when bank insolvent, his trustee in bankruptcy and books are examinable before grand jury on investigation of affairs of bank; State v. MacQueen, 69 N. J. L. 527, 55 Atl. 1008, arguendo.

Syl. 3 (XI, 62). Nonproduction of papers as proof.

Approved in United States v. Armour, 142 Fed. 825, one appearing before corporation commissioner at his request and gives testimony or produces documents, though not subpoenaed, is exempt from prosecution for violation of anti-trust law; In re Hale, 139 Fed. 502, subpoena commanding officers of corporation supposed to have violated anti-

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trust law to appear before grand jury and to bring all corporation's books and papers, is void; Rosenberger v. Harris, 136 Fed. 1003, Rev. St., § 3929, relating to fraud orders, does not authorize Postmaster General to issue such order against mail order liquor business, though seller guilty of false statement in advertisement as to age of liquors; In re Hess, 134 Fed. 111, bankrupt cannot be compelled to produce books of account for examination where they might tend to incriminate him; dissenting opinion in In re Conrades, 112 Mo. App. 47, 85 S. W. 159, majority upholding order of municipal assembly requiring production of books of corporation in aid of investigations as to evasion of taxes by corporation, where privilege of witness not raised before assembly; In re Briggs, 135 N. C. 134, 135, 136, 47 S. E. 408, upholding Code, § 1215, providing witness in gambling case not excused from testifying as to his own gambling; State v. Murphy, 128 Wis. 207, 107 N. W. 472, determining right of alderman accused of accepting bribe to immunity from prosecution because he had testified before grand jury.

Distinguished in Gruberg v. United States, 145 Fed. 87, 88, 89, on prosecution of partners for conspiracy to enter imported goods at less than true value, refusal to charge that refusal of defendants to produce invoice on notice by United States not reversible error.

Syl. 4 (XI, 62). Fourth and fifth amendments related.

Approved in Hale v. Henkel, 201 U. S. 82, 50 L. 669, 26 Sup. Ct. 370, determining right of officer of corporation to refuse to produce books before grand jury investigating violation of anti-trust law; Interstate Commerce Commission v. Baird, 194 U. S. 45, 48 L. 869, 24 Sup. Ct. 563, upholding compulsory production of documents in proceeding before commerce commission alleging violation by railroad of Commerce Act of 1887.

Syl. 5 (XI, 62). Forfeitures are criminal proceedings.

Approved in United States v. Lot of Precious Stones, 134 Fed. 63, 68 C. C. A. 1, acquittal of husband of fraudulent importation is bar but nolle prosequi of information against wife is not bar to forfeiture proceedings; United States v. One Black Horse, 129 Fed. 169, vehicle owned and let by liveryman and used wholly within United States for purpose of transporting illegally imported liquor was forfeitable under Rev. St., §§ 3061-3063, though owner had no knowledge of use; Ex parte Munn, 140 Fed. 783, arguendo.

Distinguished in United States v. Donaldson-Shultz Co., 148 Fed. 584, 585, acquittal of obstructing navigable stream does not bar suit to compel removal of obstruction; United States v. Hung Chang, 134 Fed. 25, 67 C. C. A. 93, Chinese deportation proceedings are civil, and defendant's statements to arresting officer are admissible against him; Whitlow v. Nashville etc. Ry. Co., 114 Tenn. 354, 84 S. W. 620, Code Ala. 1896, § 27, providing for action by personal representative for injuries to employee resulting in death, is not final so as to prevent courts of other states from entertaining action thereon.

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Syl. 6 (XI, 63). Constitutional guaranties liberally construed.

Approved in South Carolina v. United States, 199 U. S. 450, 50 L. 265, 26 Sup. Ct. 110, state liquor dispensing agents are subject to federal revenue tax; Kepner v. United States, 195 U. S. 126, 49 L. 123, 24 Sup. Ct. 797, government's right to appeal from acquittal in Philippine court of first instance taken away by Act of 1902, § 5, for government of Philippines; Schick v. United States, 195 U. S. 69, 49 L. 102, 24 Sup. Ct. 826, one prosecuted by information under Act 1886, for purchasing or receiving for sale oleomargarine not stamped according to law, may waive jury; Samel v. Dodd, 142 Fed. 71, holding void order requiring bankrupt to turn over property or money forming part of his estate under penalty of commitment for contempt; Dyer v. Mayor etc. of Baltimore, 140 Fed. 888, refusing to enjoin condemnation proceedings where statute required two weeks' publication of notice of meeting to assess damages, four days' notice of time to review assessment and two weeks' notice for right to appeal; Ex parte Riggins, 134 Fed. 420, upholding indictment for conspiracy under Rev. St., §§ 5508, 5509, for lynching negro in custody of sheriff to prevent his trial according to law.

Distinguished in dissenting opinion in Hale v. Henkel, 201 U. S. 88, 50 L. 671, 26 Sup. Ct. 370, majority determining right of officer of corporation to refuse to produce books before grand jury investigating violation of anti-trust law.

(XI, 60.) Miscellaneous. Cited in Fox v. Stubenrauch, 2 Cal. App. 94, 83 Pac. 84, discussing writ of assistance.

116 U. S. 642-660, 29 L. 755, NORTHERN PAC. R. R. v. HERBERT.

Syl. 1 (XI, 64). Allowance of challenge to proper juror.

Approved in Howard v. Kentucky, 200 U. S. 173, 50 L. 425, 26 Sup. Ct. 189, error of state court in discharging juror after acceptance is not denial of due process of law; Stevens v. Union R. R. Co., 26 R. I. 106, 58 Atl. 498, 66 L. R. A. 465, allowance of peremptory challenges in excess of statutory number is not ground for reversal in absence of showing of prejudice.

Syl. 2 (XI, 65). New trial—Remission of verdict.

Approved in Noxon v. Remington, 78 Conn. 299, 61 Atl. 964, and Adcock v. Oregon R. R. Co., 45 Or. 180, 77 Pac. 80, both following rule; Southern Pac. Co. v. Tomlinson, 4 Ariz. 132, 33 Pac. 711, applying rule in action by widow for wrongful death of husband.

Syl. 3 (XI, 65). Injuries caused by fellow-servant.

Approved in American Bridge Co. v. Seeds, 144 Fed. 608, holding bridge company not liable for injuries to servant by being struck by crane because of foreman's inopportune signal; dissenting opinion in Northern Pac. Ry. Co. v. Dixon, 194 U. S. 353, 48 L. 1013, 24 Sup. Ct. 683, majority holding negligence of railway telegraph operator in re-

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porting to train dispatcher movement of trains resulting in death of fireman is negligence of fellow-servant.

Syl. 4 (XI, 66). Master's duty—Safe place and appliances.

Approved in Southern Pac. Co. v. Hitzer, 135 Fed. 284, 68 C. C. A. 26, determining degree of care required of railroad in selection of servants; Chambers v. American Tin Plate Co., 129 Fed. 564, 64 C. C. A. 129, building contractor employing boss carpenter to erect scaffolding for bricklayers is liable for injuries to latter due to negligent construction; Illinois Central R. R. Co. v. Langan, 116 Ky. 321, 76 S. W. 32, master is liable for injuries to servant while unloading steel by reason of failure to provide sufficient number of men to do work; McDonald v. Michigan etc. R. R. Co., 132 Mich. 377, 379, 102 Am. St. Rep. 426, 93 N. W. 1043, holding railroad liable to conductor for injuries caused by defective brake chain where conductor had tried brakes before starting but chain broke after inspection by inspector; Neeley v. Southwestern etc. Oil Co., 13 Okl. 373, 75 Pac. 543, 64 L. R. A. 145, holding master liable for injuries to employee working in cotton-oil mill; Merrill v. Oregon etc. R. Co., 29 Utah, 278, 110 Am. St. Rep. 695, 81 Pac. 88, holding master liable for death of car-repairer by kicking string of cars against cars between which deceased was working because of failure of master to establish and enforce rules for safety of servants; Norfolk etc. Ry. Co. v. Wade, 102 Va. 143, 45 S. E. 916, holding railroad liable for injuries to servant caused by hidden defect in handle of handcar; Richards v. Iron Works, 56 W. Va. 522, 49 S. E. 442, holding master liable for injuries to servant caused by negligent construction of scaffolding by master or his foreman. See 98 Am. St. Rep. 301, note.

Distinguished in Floyd v. Colorado etc. Iron Co., 18 Colo. App. 156, 70 Pac. 453, where superintendent told plaintiff he would send A with tackle to replace machinery and order plaintiff to help A, plaintiff assumed risk by proceeding with work without tackle on A's suggestion.

Syl. 9 (XI, 70). Servant failing to use ordinary care.

Approved in Bell Telephone Co. v. Detharding, 148 Fed. 374, telephone company not liable for death of "trouble finder" killed, while investigating trouble, by shock due to crossing of electric light and telephone wires.

116 U. S. 661-664, 29 L. 763, PRESTON v. MANARD.

Syl. 1 (XI, 70). Patents—Prior art.

Approved in Bullock Elec. Mfg. Co. v. General Elec. Co., 149 Fed. 418, holding void Reist patent No. 508,637, for improvement in armature cores.

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116 U. S. 665-671, 29 L. 770, VICKSBURG ETC. R. R. v. DENNIS.

Syl. 1 (XI, 70). Follow state decisions.

Approved in Columbia Ave. Sav. Fund etc. Co. v. Dawson, 130 Fed. 166, upholding city contract to pay stated sum semi-annually as hydrant rentals for term for water furnished for fire purposes.

Syl. 2 (XI, 71). Tax exemption not presumed.

Approved in New York v. State Board of Tax Commrs., 199 U. S. 36, 41, 50 L. 75, 77, 25 Sup. Ct. 715, special franchise tax imposed by N. Y. Laws 1899, c. 712, does not impair contract by which street railway franchise granted in consideration of annual payment of percentage of earnings. See 105 Am. St. Rep. 698, 702, note.

Syl. 4 (XI, 72). Tax exemption—Omissions of assessor.

Approved in Adams v. Kuykendall, 83 Miss. 595, 35 So. 835, fact that city tax officers acting under charter power to levy city taxes on property in limits omitted property from rolls under belief that it was exempt does not prevent state revenue agent from taxing such property.

CXVII UNITED STATES.

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117 U. S. 1-34, 29 L. 791, EXPRESS CASES.

Syl. 2 (XI, 75). Railroad need not carry express.

Approved in Donovan v. Pennsylvania Co., 199 U. S. 298, 299, 50 L. 201, 26 Sup. Ct. 91, railroad making arrangements with transfer company to furnish at stations vehicles for accommodation of passengers may exclude other hackmen from depot; Louisville etc. R. R. Co. v. West Coast Naval etc. Co., 198 U. S. 499, 49 L. 1141, 25 Sup. Ct. 745, wharf in harbor at foot of city street built by railroad under city authority for transporting freight by such carriers as it might select is not public wharf, whose use can be demanded by others for use of own vessels; Chicago etc. Ry. Co. v. Hamler, 215 Ill. 530, 106 Am. St. Rep. 187, 74 N. E. 706, upholding contract between sleeping-car company and porter releasing railroad using cars from injury to him while traveling over lines; United States Express Co. v. State, 164 Ind. 210, 73 N. E. 106, upholding statute requiring express companies to deliver packages to consignee to whom directed in cities of certain population; Hedding v. Gallagher, 72 N. H. 381, 391, 57 Atl. 227, 232, 64 L. R. A. 811, where railroad granting exclusive privilege to transfer company of soliciting baggage on depot grounds, other teamsters may be excluded therefrom.

Syl. 3 (XI, 76). Courts—Arrangements for business intercourse.

Approved in Interstate C. Com. v. Southern Pac. Co., 132 Fed. 847, rule adopted by agreement of railroads by which through rates on certain

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rates is conditioned on reservation of initial carrier of power to route over connecting lines, is traffic pool within Commerce Act, § 5; Norfolk etc. R. R. Co. v. Commonwealth, 103 Va. 296, 49 S. E. 41, upholding corporation commission's authority to regulate charges of company conducting switch line and handling cars thereon for placing cars on scales.

117 U. S. 34-51, 29 L. 785, PICKARD v. PULLMAN ETC. CAR CO.

Syl. 1 (XI, 77). Commerce—Tax on leased cars.

Approved in Kirven v. Virginia-Carolina Chemical Co., 145 Fed. 293, corporation of another state shipping goods to South Carolina vendee on order taken by local agent subject to its approval may recover price though it has not complied with South Carolina laws; Murphy v. Wheatley, 100 Md. 365, 59 Atl. 706, fact that Laws 1892, p. 156, imposing double liability on stockholders, is by page 153 made applicable to foreign corporations, does not affect its validity as to domestic corporations; Attorney General v. Electric etc. Battery Co., 188 Mass. 240, 74 N. E. 467, upholding act of 1903, requiring foreign corporations to file yearly certificate of certain facts and to pay excise tax on capital stock, as applied to corporation doing interstate business but maintaining office in state.

117 U. S. 52-71, 29 L. 805, HAGOOD v. SOUTHERN.

Syl. 2 (XI, 78). States—Suit against officer.

Approved in De Laittre v. Board of Commrs., 149 Fed. 802, decision of Oregon commissioners for sale of school lands as to who is entitled to patent, prior to its issuance, is not reviewable by court; Smith v. Alexander, 146 Fed. 108, refusing preliminary injunction in suit against state commissioners to secure enforcement of contract between state and complainant according to latter's interpretation, correctness of which is denied by defendants; State v. Mortensen, 69 Neb. 385, 95 N. W. 834, denying mandamus to compel board of public lands to perform contract for leasing of convict labor; Buchanan v. State Treasurer, 68 S. C. 420, 47 S. E. 686, denying mandamus to compel comptroller general to issue circuit judge's salary warrant, where there is no statute fixing salary and no appropriation made therefor. See 108 Am. St. Rep. 834, 837, 841, note.

Distinguished in Graham v. Folsom, 200 U. S. 255, 50 L. 469, 26 Sup. Ct. 245, mandamus to compel county auditor and treasurer to levy tax to pay judgment on township bonds is not suit against state.

Syl. 3 (XI, 80). Political obligations and personal rights.

See 108 Am. St. Rep. 837, note.

117 U. S. 72-96, 29 L. 821, WRIGHT v. KENTUCKY ETC. RY. CO.

Syl. 3 (XI, 80). Director's interest antagonistic to corporation.

Approved in Young v. City of Mankato, 97 Minn. 6, 105 N. W. 970, 8 L. R. A. (N. S.) 849, freeholders appointed to draft city charter

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cannot employ and agree to pay one of members as attorney to prepare charter.

117 U. S. 96-122, 29 L. 811, LEATHER MANUFACTURING BANK v. MORGAN.

Syl. 2 (XI, 80). Estoppel—Failure to examine bankbook.

Approved in Scanlon-Gipson Lumber Co. v. Germania Bank, 90 Minn. 486, 97 N. W. 383, applying principle where passbook showed account of checks collected through clearing-house.

Syl. 3 (XI, 81). Estoppel—Intent to mislead unnecessary.

Approved in United States v. Martingale, 146 Fed. 294, upholding indictment against national bank officer for misapplication of funds by drawing checks when he had no funds; Manhattan Web. Co. v. Aquidneck Nat. Bank, 133 Fed. 78, where bank holding personal note of corporation's treasurer received corporation's check with directions to apply on note, which it did without inquiry, corporation may recover money though no demand made for four years and entry made on passbook; Hennessy Bros. etc. Co. v. Memphis Nat. Bank, 129 Fed. 560, 64 C. C. A. 125, where corporation doing business in another state through local officer, who opened account at bank, and on account being overdrawn gave corporation's demand note and amount credited on passbook, corporation is liable on note.

Syl. 4 (XI, 81). Forgery of bank check—Depositor's recovery.

Approved in Commercial Nat. Bank v. Nacogdoches etc. Co., 133 Fed. 504, 66 C. C. A. 375, where plaintiff received warehouse receipts purporting to be issued by defendant, as collateral, and wrote to defendant saying it had accepted receipts, but latter did not reply until borrower failed, defendant liable for loss where receipts were forgeries; Merchants' Nat. Bank v. Nichols, 223 Ill. 52, 79 N. E. 41, foreign corporation opening local office whose local agent opens bank account and makes overdrafts may deny liability though it did not examine passbooks.

Syl. 5 (XI, 81). Estoppel of depositor—Forgery of check.

Approved in dissenting opinion in Rollins v. Ebbs, 138 N. C. 160, 50 S. E. 584, majority holding sureties signing guardian's bond with penalty omitted and giving it to another for delivery are estopped to deny its validity where penalty afterward inserted.

Distinguished in Murphy v. Metropolitan Nat. Bank, 191 Mass. 164, 77 N. E. 695, where loan broker negotiated with attorney, who acted as agent to procure loan for land owner, and note and mortgage executed and check given lawyer payable to land owner, and lawyer forged payee's name, broker could recover of bank paying check.

117 U. S. 123-129, 29 L. 837, CHICAGO ETC. RY. v. OHLE.

(XI, 83.) Miscellaneous. Cited in Virginia v. Felts, 133 Fed. 90, 96, as to proper mode of trying issue as to jurisdiction.

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117 U. S. 129-139, 29 L. 830, TENNESSEE v. WHITWORTH.

Syl. 1 (XI, 83). Taxable elements of corporations.

Approved in Powers v. Detroit etc. Ry. Co., 201 U. S. 560, 50 L. 866, 26 Sup. Ct. 556, contract between state and railroad preventing tax other than that prescribed by Mich. Laws 1855, p. 305, § 9, created by provisions thereof that company shall pay annual tax of percentage of paid-in capital in lieu of other taxes; Succession of Kohn, 115 La. 74, 38 So. 899, corporate shares are liable to inheritance tax though corporation taxed on all its property.

Syl. 3 (XI, 84). Double taxation not presumed.

Approved in Stroh v. Detroit, 131 Mich. 117, 90 N. W. 1032, under Pub. Acts 1893, No. 206, § 8, subd. 7, shares in foreign corporation are exempt from taxation when its property is located and taxable in state; State v. Louisiana etc. Ry. Co., 196 Mo. 535, 94 S. W. 281, bridge owned by railroad and used as part of roadbed and tracks, being assessable as part of railroad, is not also assessable as toll bridge though so used; First National Bank v. Douglas Co., 124 Wis. 19, 102 N. W. 316, real estate belonging to national bank acquired with and constituting part of its capital is exempt from taxation under Banking Act 1866, p. 129.

Syl. 4 (XI, 84). Construction of statutory contracts.

Approved in Luhrig Coal Co. v. Jones etc. Co., 141 Fed. 622, construing contract of sale of coal for future delivery.

Syl. 5 (XI, 84). Tax exemption of capital stock.

Approved in First National Bank v. Douglas, 124 Wis. 21, 102 N. W. 317, real estate belonging to national bank acquired with and constituting part of capital is exempt under Banking Act 1866, p. 129.

117 U. S. 151-180, 29 L. 845, VAN BROCKLIN v. STATE OF TENNESSEE.

Syl. 4 (XI, 86). Taxation of public property.

Distinguished in South Carolina v. United States, 199 U. S. 452, 50 L. 266, 26 Sup. Ct. 110, government may exact liquor revenue license from state liquor dispensing agent.

Syl. 5 (XI, 86). State tax of government property.

Approved in United States v. Thurston Co., 143 Fed. 289, proceeds of sales of lands allotted to Indians under act of 1882, by Indian heirs of allottees, which have been deposited in bank under direction of Interior Department, are exempt from state taxation; Mosely v. State, 115 Tenn. 60, 86 S. W. 716, interest on United States bonds is not taxable by state in hands of bondholder; dissenting opinion in South Carolina v. United States, 199 U. S. 466, 467, 468, 471, 50 L. 272, 274, 26 Sup. Ct. 110, majority holding government may exact liquor revenue tax from state liquor dispensing agent.

Distinguished in Hibernia Savings etc. Soc. v. San Francisco, 200 U. S. 314, 50 L. 496, 26 Sup. Ct. 265, United States treasury checks for interest

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on government bonds, intended for immediate payment, are taxable by state in hands of owner.

Syl. 6 (XI, 87). Tax on property acquired at tax sale.

See 101 Am. St. Rep. 182, note.

117 U. S. 180-197, 29 L. 839, GRAFFAM v. BURGESS.

Syl. 2 (XI, 87). Setting aside judicial sales—Inadequacy.

Approved in Kessler v. Ensley, 141 Fed. 155, upholding validity of purchase of lands by former director; Sturgiss v. Corbin, 141 Fed. 3, refusing to set aside auction sale of bankrupt's property under order of court merely because unsuccessful bidder makes advance offer of four per cent; George v. Norwood, 77 Ark. 219, 91 S. W. 558, refusing to set aside judicial sale for $4,000, where advance bid of $5,000 made. See 113 Am. St. Rep. 147, note.

Syl. 3 (XI, 88). Judicial sales—Gross inadequacy—Fraud.

Approved in Macfarlane v. Macfarlane, 50 Fla. 580, 39 So. 998, setting aside master's sale, of which notice published in distant newspaper, though several papers published at place of sale and price obtained grossly inadequate.

Syl. 5 (XI, 88). Equity—Amendment of prayer.

Approved in Indianapolis etc. Co. v. Lawson, 143 Fed. 838, upholding court's action in construing complaint as covering case made by proof; Chicago etc. Vehicle Co. v. American etc. Leather Co., 141 Fed. 520, upholding amendment of bankruptcy petition to meet evidence introduced showing specific preferential transfers as acts of bankruptcy.

117 U. S. 201-210, 29 L. 855, TUA v. CARRIERE.

Syl. 4 (XI, 89). Repeal of bankruptcy revives insolvency law.

Approved in In re Salmon, 143 Fed. 403, Rev. St. Mo. 1899, §§ 1305, 1306, relating to liquidation of banks, is insolvency law, suspended by bankruptcy act; In re Porterfield, 138 Fed. 198, where trust deed from bankrupt to wife recorded less than four months prior to state suit, but more than four months prior to bankruptcy, and all parties submitted to bankruptcy sale, petitioning creditors not entitled to have proceeds according to state statute declaring preferential transfers void.

117 U. S. 210-227, 29 L. 860, PATCH v. WHITE.

Syl. 1 (XI, 90). Wills—Extrinsic evidence—Latent ambiguity.

Approved in Pate v. Bushong, 161 Ind. 539, 100 Am. St. Rep. 287, 69 N. E. 293, 63 L. R. A. 593, following rule.

Syl. 2 (XI, 90). Wills—Latent ambiguity.

Approved in Pate v. Bushong, 161 Ind. 540, 545, 553, 100 Am. St. Rep. 287, 69 N. E. 294, 295, 298, 63 L. R. A. 593, Sorenson v. Carey, 96 Minn. 206, 104 N. W. 960, and Wheaton v. Pope, 91 Minn. 306, 97 N. W. 1048, all following rule.

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Distinguished in Oliver v. Henderson, 121 Ga. 840, 49 S. E. 744, where testator devised lot 78 in certain district, but did not own such lot, but owned lot 68, parol evidence to show he meant lot 68 inadmissible where not shown he did not own other lots in district.

117 U. S. 228-232, 29 L. 858, BARNEY v. WINONA ETC. R. R. CO.

Syl. 1 (XI, 91). Matters considered on second appeal.

Approved in United States v. Denver etc. R. R. Co., 11 N. M. 154, 66 Pac. 552, as to law of case on second appeal.

Syl. 2 (XI, 91). Railroad grant—Indemnity lands.

Approved in Sage v. Maxwell, 91 Minn. 533, 99 N. W. 44, under Hastings & Dakota Railroad grant, company acquired no vested rights to indemnity lands till deficiency in place lands ascertained and selection of lieu lands made and approved.

Syl. 3 (XI, 91). Land grant to Minnesota—Indemnity lands.

Approved in Humbird v. Avery, 195 U. S. 508, 49 L. 299, 25 Sup. Ct. 123, refusing to determine in advance of final action of Land Department rights of railroad's grantees of lands within indemnity limits of grant of 1864, and purchasers from United States who claim protection of act of July 1, 1898.

117 U. S. 236-241, 29 L. 888, PHELPS v. OAKS.

Syl. 2 (XI, 92). Ejectment—Landlord as intervener—Citizenship.

Approved in King v. Davis, 137 Fed. 236, and King v. Davis, 137 Fed. 221, both holding where in ejectment requisite citizenship shown, and after judgment against tenant, landlord intervened to open judgment, his citizenship is immaterial.

Distinguished in Cleveland v. Cleveland etc. Ry. Co., 147 Fed. 176, where lessor and lessee in possession who has equity for improvements are joined in ejectment, neither can remove cause when other defendant and plaintiff are citizens of same state.

Syl. 3 (XI, 93). Intervention by stranger.

Approved in Ames Realty Co. v. Big Indian Min. Co., 146 Fed. 180, in federal suit to protect water rights from other appropriators, all of whom are citizens of states other than complainant's, cross-bills by any of defendants setting up priority rights are entertainable irrespective of citizenship.

117 U. S. 241-254, 29 L. 868, EX PARTE ROYALL.

Syl. 1 (XI, 93). Federal habeas corpus—State prisoner.

Approved in Re Lincoln, 202 U. S. 180, 50 L. 985, 26 Sup. Ct. 602, denying habeas corpus on behalf of one convicted in district court of bringing liquor into Indian country where term of imprisonment has almost expired; Ex parte Moran, 144 Fed. 601, 602, upholding power of circuit court of appeals to issue habeas corpus to inquire into power

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of Oklahoma courts to imprison one convicted of capital offense; Kentucky v. Powers, 139 Fed. 480, upholding removal of criminal prosecution where defendant discriminated against in selection of jurors; Ex parte Moebus, 137 Fed. 156, upholding sufficiency of petition for habeas corpus showing extradited prisoner confined in penitentiary for five years on governor's warrant only; West Virginia v. Laing, 133 Fed. 891, 66 C. C. A. 617, member of marshal's posse who killed one indicted in federal court while trying to arrest him is not subject to prosecution therefor by state.

Syl. 2 (XI, 93). Federal habeas corpus—State prisoner.

Approved in Re Lincoln, 202 U. S. 180, 182, 50 L. 985, 986, 26 Sup. Ct. 602, denying habeas corpus on behalf of one convicted in district court of bringing liquor into Indian country where term of imprisonment has almost expired; United States v. Lewis, 200 U. S. 6, 50 L. 345, 26 Sup. Ct. 229, affirming 129 Fed. 825, denying habeas corpus to discharge soldier indicted by state court for killing in city streets one who committed depredation on military reservation, where evidence conflicted as to whether killing justified; Riggins v. United States, 199 U. S. 549, 50 L. 304, 26 Sup. Ct. 147, habeas corpus to test sufficiency of indictment of district court and removed to circuit court not issuable by latter; Ex parte Collins, 149 Fed. 574, 575, 576, objection that petitioner extradited for perjury was again indicted for perjury committed at trial and convicted is not available on habeas corpus pending state appeal; Ex parte Caldwell, 138 Fed. 489, releasing one imprisoned for refusing to obey subpoena of illegal committee appointed by West Virginia house of delegates appointed to investigate, during vacation, governor's misconduct; In re Dowd, 133 Fed. 749, 752, 753, denying habeas corpus where petitioner confined for violation of state injunction in suit by state to prevent election frauds; Jamison v. Wimbish, 130 Fed. 360, 361, granting habeas corpus where one sentenced by police judge for minor offense to seven months in chain-gang, where prisoners wear stripes and irons and sleep in them.

Distinguished in dissenting opinion in United States v. Sing Tuck, 194 U. S. 174, 48 L. 923, 24 Sup. Ct. 621, majority holding habeas corpus does not lie where Chinese alleging citizenship denied entry and Secretary of Commerce has not decided appeal.

Syl. 3 (XI, 95). Habeas corpus after state conviction.

Approved in Re Lincoln, 202 U. S. 181, 50 L. 986, 26 Sup. Ct. 602, denying habeas corpus on behalf of one convicted in district court of bringing liquor into Indian country where term of imprisonment has almost expired.

(XI, 93.) Miscellaneous. Cited in 112 Am. St. Rep. 136, note.

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117 U. S. 254, 255, 29 L. 872, EX PARTE ROYALL.

Syl. 1 (XI, 95). Federal habeas corpus—State prisoner.

Approved in Riggins v. United States, 199 U. S. 549, 50 L. 304, 26 Sup. Ct. 147, habeas corpus to test sufficiency of indictment found in district court and removed to circuit court not issuable by latter; Ex parte Collins, 149 Fed. 575, objection that petitioner extradited for perjury was indicted and convicted for perjury committed at trial not available on habeas corpus pending state appeal.

117 U. S. 255-271, 29 L. 892, APPLEGATE v. LEXINGTON ETC. MIN. CO.

Syl. 5 (XI, 95). Presumption of jurisdiction—Publication.

Approved in Johnson v. Hunter, 147 Fed. 139, permitting collateral attack on judgment obtained by publication of summons where affidavit as disclosed by record was insufficient; Cohen v. Portland Lodge etc. Elks, 144 Fed. 269, upholding sufficiency of affidavit of service by publication on minor defendant in foreclosure suit; Wallace v. Adams, 143 Fed. 728, recital in judgment that required notice was "given to defendants in conformity of law," raises presumption of due service and of jurisdiction of persons, in absence of inconsistent record; Blue Mt. Iron etc. Co. v. Portner, 131 Fed. 59, 65 C. C. A. 295, appointment of receiver for corporation by state court of general jurisdiction not collaterally attackable for want of jurisdiction of corporation's person; Ingram v. Sherwood, 75 Ark. 181, 87 S. W. 437, applying rule to decree confirming tax title; Clay v. Bilby, 72 Ark. 108, 78 S. W. 751, upholding sufficiency of affidavit of publication of warning order in proceedings for sale of land under overdue tax act; McHatton v. Rhodes, 143 Cal. 280, 281, 101 Am. St. Rep. 125, 76 Pac. 1038, where foreign judgment offered in evidence recited defendants had been fully notified by publication more than thirty days prior to first term of court, it is presumed that order made for publication; Franklin Union v. People, 220 Ill. 366, 110 Am. St. Rep. 248, 77 N. E. 180, where court has before it complainant and party against whom injunction asked on bill stating case of equity jurisdiction, error in issuing injunction broader than bill does not defeat contempt for violation of injunction; O'Brien v. People, 216 Ill. 363, 108 Am. St. Rep. 219, 75 N. E. 112, where in suit to enjoin strikers defendants served with process failed to appear, jurisdiction not affected by defects in bill; dissenting opinion in Haddock v. Haddock, 201 U. S. 607, 50 L. 885, 26 Sup. Ct. 525, majority holding mere domicile in state of one spouse does not give state courts jurisdiction to decree default divorce against nonresident defendant served by publication.

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117 U. S. 271, 272, 29 L. 898, BOARDMAN v. TOFFEY.

Syl. 1 (XI, 96). General finding conclusive.

Approved in Paul v. Delaware etc. R. Co., 130 Fed. 956, following rule.

117 U. S. 272-275, 29 L. 897, JEFFERSON v. DRIVER.

Syl. 3 (XI, 97). Removal by purchase pendente lite.

Approved in Nash v. McNamara, 145 Fed. 543, parties brought into state action by cross-complaint alleging they claim interest in property, and who file complaint alleging they are successors of plaintiff, cannot remove.

117 U. S. 275-279, 29 L. 899, SLOANE v. ANDERSON.

Syl. 1 (XI, 97). Removal—Separable controversy.

Approved in Alabama etc. Ry. Co. v. Thompson, 200 U. S. 215, 50 L. 446, 26 Sup. Ct. 161, case in which plaintiff elects to sue foreign corporation and servants jointly for tort is removable by corporation irrespective of citizenship of other defendants, though joinder improper; County Commissioners v. United Rys. Co., 99 Md. 89, 57 Atl. 677, under Code Gen. Laws, art. 75, § 102, relating to change of venue for bias, joint defendants cannot remove cause without consent of all codefendants.

117 U. S. 280-282, 29 L. 898, FIDELITY INS. CO. v. HUNTINGTON.

Syl. 1 (XI, 98). Removal—Separable controversy.

Approved in Palmer v. Inman, 122 Ga. 230, 50 S. E. 88, in action by judgment creditor against debtor and his lien creditor to subject encumbered property to payment of judgment, incidental relief against creditor who is nonresident is not ground for removal.

Distinguished in Boatmen's Bank v. Fritzlen, 135 Fed. 661, 68 C. C. A. 288, granting removal of separate controversy disclosed in bill.

117 U. S. 288-312, 29 L. 880, THE CHEROKEE TRUST FUNDS.

Syl. 1 (XI, 100). Cherokees are nation.

Approved in Delaware Indians v. Cherokee Nation, 193 U. S. 144, 48 L. 654, 24 Sup. Ct. 342, inquiry into validity of method of adoption of amendments to Cherokee nation's constitution not authorized by 30 Stat. 495, c. 517, § 25; McBride v. Farrington, 131 Fed. 799, under Act Cong., 30 Stat. 498, § 13, and Laws Chickasaw Nation, pp. 188, 190, lease of coal and oil lands allotted to Indians for limited period valid.

Syl. 2 (XI, 100). Cherokees are citizens.

Approved in Delaware Indians v. Cherokee Nation, 193 U. S. 136, 48 L. 651, 24 Sup. Ct. 342, only right of occupancy for life with

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additional privilege secured in case of allotment was acquired by Delawares in lands which Cherokees agreed by contract of 1867 to sell to such Delawares.

117 U. S. 312-327, 29 L. 873, PHOENIX TRUST CO. v. ERIE ETC. TRANSPORTATION CO.

Syl. 4 (XI, 101). Marine insurance—Perils.

Approved in Ryan v. Agricultural Ins. Co., 188 Mass. 13, 73 N. E. 850, vendee in conditional sale who by contract is liable for loss by fire has insurable interest to amount of whole property.

Syl. 5 (XI, 101). Carriers—Insurance by shipper.

Approved in Pennsylvania R. Co. v. Burr, 130 Fed. 848, 65 C. C. A. 331, following rule; The Livingstone, 130 Fed. 749, 65 C. C. A. 610, where ship sunk and abandoned to insurer as total loss is insured, by valued policy and stipulated sum paid to owner, who afterward recovers actual value, insurer can only recover amount it has paid out; Oceanic Steam Nav. Co. v. Aitken, 196 U. S. 599, 49 L. 615, 25 Sup. Ct. 317, and Sprigg v. Rutland R. R. Co., 77 Vt. 355, 60 Atl. 146, both arguendo.

Distinguished in Erie etc. Transp. Co. v. Erie R. Co., 142 Fed. 15, final decree in collision suit, in which all parties are before court, determining fault and damages and apportioning same, deprives admiralty of jurisdiction over suit by one vessel against other for contribution to cargo damage refused in first suit.

Syl. 6 (XI, 102). Insurer paying loss subrogated.

Approved in Judd v. New York etc. S. S. Co., 130 Fed. 992, declarations of insurer which has paid loss are inadmissible against right of action of insured against third person.

(XI, 100.) Miscellaneous. Cited in Parvin v. Mutual Reserve Life Ins. Co., 125 Iowa, 99, 100 N. W. 40, as to right to reinsure.

117 U. S. 348-355, 29 L. 909, MACKIN v. UNITED STATES.

Syl. 1 (XI, 104). Indictment—What is infamous crime.

Approved in Garitee v. Bond, 102 Md. 383, 111 Am. St. Rep. 388, 62 Atl. 632, one convicted of overcharging for prosecution of pension claim under Comp. St. 1901, p. 3231, is not convicted of infamous crime within statute disqualifying one convicted of infamous crime from acting as executor; State v. Foster, 187 Mo. 606, 86 S. W. 249, offense within Rev. St. 1899, § 2041, punishing bribery of witness is misdemeanor though punishable by imprisonment in penitentiary; Territory v. Stroud, 6 Okl. 109, 50 Pac. 266, upholding statute providing for prosecution of misdemeanors by information without preliminary examination; Ex parte Lacey, 6 Okl. 6, 37 Pac. 1096, where one is, on May 10, 1894, arrested on complaint before federal commissioner for infamous crime committed May 13, 1891, filing of complaint does

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not stay limitations under Rev. St., § 1044; State v. Nichols, 27 R. I. 74, 83, 60 Atl. 765, 768, conviction of cruelty to horse under statute providing for imprisonment not to exceed eleven months or fine, or both, is not infamous crime within constitutional provision relating to indictment.

Distinguished in United States v. Thomas, 145 Fed. 78, one may be indicted for conspiracy under Rev. St., § 5440, though overt act may constitute separate offense; United States v. Ames Mer. Co., 2 Alaska, 76, corporation is indictable for engaging in liquor business in violation of Rev. St., § 3244.

117 U. S. 373-378, 29 L. 950, YALE LOCK MFG. CO. v. SARGENT.

Syl. 1 (XI, 106). Patent infringement—Equivalents.

Approved in Universal Brush Co. v. Sonn, 146 Fed. 531, Morrison patent No. 717,014, claim 1, for method of making brushes, infringed by method of Sonn patent No. 791,510.

117 U. S. 379-387, 29 L. 924, KERR v. SOUTH PARK COMMRS.

Syl. 3 (XI, 107). Eminent domain—Evidence of value.

Approved in Guyandotte Valley Ry. Co. v. Buskirk, 57 W. Va. 425, 110 Am. St. Rep. 792, 50 S. E. 524, determining compensation where whole lot taken by railroad on condemnation.

117 U. S. 389-401, 29 L. 915, FULKERSON v. HOLMES.

Syl. 2 (XI, 107). Evidence of pedigree—Independent proof.

Approved in Davis v. Moyles, 76 Vt. 39, 56 Atl. 178, recitals in petition to legislature for granting of lands that lands had been confiscated by state from petitioner's father, who was original grantee, inadmissible in action of trespass to show relationship.

Syl. 3 (XI, 107). Declarations of pedigree in ancient deeds.

Approved in Topper v. Perry, 197 Mo. 543, 95 S. W. 206, on issue as to common-law marriage, declarations of alleged husband not in presence of wife are admissible to disprove marriage; Imboden v. St. Louis Trust Co., 111 Mo. App. 237, 86 S. W. 267, determining sufficiency of evidence of common-law marriage; Wilson v. Braden, 56 W. Va. 375, 107 Am. St. Rep. 929, 49 S. E. 410, recitals of heirship and widowhood in deeds upward of fifty years old, under which possession continuously held, are admissible against strangers to title claiming adversely.

117 U. S. 406-410, 29 L. 928, SIOUX CITY R. R. v. CHICAGO RY. CO.

Syl. 1 (XI, 108). Title to railroad grant—Relation back.

Approved in Humbird v. Avery, 195 U. S. 508, 49 L. 299, 25 Sup. Ct. 123, refusing to determine in advance of final action of Land Department rights of railroad's grantees of lands claimed to be within

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indemnity limits of Northern Pacific grant of 1864, and purchasers from United States who claim protection of act of July 1, 1898.

117 U. S. 415-419, 29 L. 919, MARSHALL v. HUBBARD.

Syl. 1 (XI, 109). Actionable false representations.

Approved in Pittsburgh Life & T. Co. v. Northern etc. Ins. Co., 148 Fed. 675, incorrect statements furnished by insurance officials in negotiations for sale of business not ground for action of deceit, where they were prepared for company's own use prior to negotiations; Kimber v. Young, 137 Fed. 747, 70 C. C. A. 178, applying rule in action for deceit in sale of bonds where defendant said he knew they were good and would be paid; Stratton's Independence v. Dines, 135 Fed. 459, 68 C. C. A. 161, where defendant sold mine to plaintiff corporation in exchange for its stock, and then contracted with another to sell stock on commission, profit made on sale of stock is no ground for action of deceit.

Syl. 2 (XI, 109). Direction of verdict.

Approved in Woodward v. Chicago etc. Ry. Co., 145 Fed. 578, upholding direction of verdict for defendant in action against railroad for damage caused by locomotive sparks.

117 U. S. 430-433, 29 L. 962, STONE v. SOUTH CAROLINA.

Syl. 1 (XI, 110). Removal—Surrender of jurisdiction by state court.

Approved in Boatmen's Bank v. Fritzlen, 135 Fed. 654, 68 C. C. A. 288, and Illinois etc. Ry. Co. v. Jones, 118 Ky. 164, 80 S. W. 485, both following rule; Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 245, 49 L. 465, 25 Sup. Ct. 251, proceeding for condemning land under Ky. St., §§ 835-839, is removable where diverse citizenship exists; State v. Southern Ry. Co., 135 N. C. 81, 47 S. E. 232, denying removal of suit by corporation commission to compel railroad to deliver coal on private siding where allegation as to jurisdictional amount insufficient.

Syl. 2 (XI, 112). Issues of fact on removal petition.

Approved in Boatmen's Bk. v. Fritzlen, 135 Fed. 653, 68 C. C. A. 288, following rule; Shane v. Butte Elec. Ry. Co., 150 Fed. 805, 815, since state court must accept as true facts alleged in removal petition, cause remanded where joinder of nonresident and resident defendants not fraudulent; Helena Power etc. Co. v. Spratt, 146 Fed. 313, where record in state suit to condemn land shows equitable title in defendant, who is citizen of state, and legal title in another defendant, who is citizen of another state, there is separable controversy removable by nonresident.

Syl. 3 (XI, 112). Removal—Suit between state and citizen.

Approved in Raphael v. Trask, 194 U. S. 277, 48 L. 978, 24 Sup. Ct. 647, denying federal jurisdiction to enjoin sale of stock by firm

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acting for stockholders unless sum deposited out of proceeds to satisfy judgment recoverable on foreclosure by complainant, where some of partners are citizens of same state as complainant; Chicago etc. Ry. Co. v. Commonwealth, 115 Ky. 285, 72 S. W. 1121, applying rule to suit by auditor's agent on behalf of state against corporation to compel assessment of omitted property.

117 U. S. 434-481, 29 L. 963, UNION TRUST CO. v. ILLINOIS MIDLAND CO.

Syl. 2 (XI, 113). Receivers—Court ordering repairs.

Approved in In re Erie Lumber Co., 150 Fed. 828, where order appointing receivers to continue bankrupt's business authorized incurrence of obligations not exceeding $3,000, and later receiver's certificates to such amount authorized, persons selling goods on credit in excess of said amount have no priority.

Syl. 11 (XI, 115). Railroad receivership—Priority of wages.

Approved in Cunningham v. Zinc etc. Min. Co., 103 Mo. App. 409, 76 S. W. 488, under Rev. St. 1899, § 3167, wages for labor performed for corporation within six months of receivership are preferred over all claims except mortgage liens; dissenting opinion in Gregg v. Metropolitan Trust Co., 197 U. S. 195, 49 L. 722, 25 Sup. Ct. 415, majority holding claim for ties necessary to preservation of railroad furnished within six months of receivership is not preferred over mortgage recorded before tie contract.

Distinguished in Gregg v. Metropolitan Trust Co., 197 U. S. 187, 49 L. 719, 25 Sup. Ct. 415, claim for ties necessary to preservation of railroad furnished within six months of receivership is not preferred over mortgage recorded before tie contract.

Syl. 14 (XI, 116). Estoppel of bondholders to question sale.

Distinguished in Anglo-American Land etc. Co. v. Lombard, 132 Fed. 743, 68 C. C. A. 89, discussing nonestoppel against creditor of corporation of ultra vires contract of latter.

Syl. 15 (XI, 116). Cancellation of bonds—Exchange for others.

Distinguished in McEwen v. Harriman Land Co., 138 Fed. 808, arguendo.

(XI, 112.) Miscellaneous. Cited in Southern Pac. R. Co. v. United States, 133 Fed. 669, 66 C. C. A. 581, answer in equity waives objection to adequacy of remedy at law.

117 U. S. 490-504, 29 L. 984, DINGLEY v. OLER.

Syl. 4 (XI, 117). Breach of contract—Refusal of performance.

Approved in McBath v. Jones Cotton Co., 149 Fed. 386, where plaintiff contracted to deliver cotton of specified grade before October 15th, and on October 4th defendant's agent refused to inspect cot-

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ton because it was below grade, defendant's rescission on October 7th entitled plaintiff to damages; Wells v. Hartford Manilla Co., 76 Conn. 34, 37, 55 Atl. 601, 604, holding no anticipatory breach by purchaser under contract to furnish certain quantity of pulp before certain date as ordered; Frohlich v. Independent Glass Co., 144 Mich. 281, 107 N. W. 890, where, after contract for sale of glass and before time for delivery seller's refusal to deliver till old account paid, was not absolute refusal to perform; Swiger v. Hayman, 56 W. Va. 126, 107 Am. St. Rep. 901, 48 S. E. 840, mere declaration by one of parties to executory contract of intention not to perform it, which is retracted almost immediately and before action by other on renunciation, is not breach of contract; Woodman v. Blue Grass Land Co., 125 Wis. 495, 104 N. W. 921, where vendor on being notified of vendee's repudiation notified vendee he would carry out his part, and in suit for earnest-money answered that he was ready to perform and had tendered performance, he must show full performance.

117 U. S. 508-514, 29 L. 982, MAHOMET v. QUACKENBUSH.

Syl. 1 (XI, 118). Statutes—Subject—Germane to title.

Approved in Blair v. Chicago, 201 U. S. 452, 50 L. 823, 26 Sup. Ct. 427, upholding Chicago street railway statutes of 1859, 1861, and 1865.

117 U. S. 514-516, 29 L. 990, BRUCE v. MANCHESTER ETC. R. R. CO.

Syl. 1 (XI, 118). Appeal—Matter in dispute.

Approved in Morris v. Bean, 146 Fed. 429, upholding federal jurisdiction over suit concerning water rights where right to use water exceeds in value $2,000.

117 U. S. 516-518, 29 L. 994, EX PARTE FONDA.

Syl. 1 (XI, 119). Federal habeas corpus—State prisoner.

Approved in Re Lincoln, 202 U. S. 181, 50 L. 986, 26 Sup. Ct. 602, denying habeas corpus where one convicted in district court of bringing liquor into Indian country; Ex parte Caldwell, 138 Fed. 489, granting habeas corpus to release one committed for contempt in disobeying summons of illegal committee of legislature; In re Dowd, 133 Fed. 749, 753, denying habeas corpus to release one committed for disobeying injunction in suit by state to prevent election frauds.

117 U. S. 519-536, 29 L. 934, NEW YORK ETC. INS. CO. v. FLETCHER.

Syl. 2 (XI, 119). Insurance—False answers written by agent.

See 107 Am. St. Rep. 114, note.

Distinguished in Collins v. Metropolitan Life Ins. Co., 32 Mont. 338, 339, 108 Am. St. Rep. 578, 80 Pac. 610, 611, warranty by insured that

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he was not connected with manufacture or sale of liquor, not broken by proof that he occasionally waited on customers of saloon-keeper for his accommodation merely and without compensation.

Syl. 3 (XI, 120). Insurance—Limitation of agent's authority.

Approved in Deming Inv. Co. v. Shawnee Ins. Co., 16 Okl. 9, 83 Pac. 920, and Dimick v. Metropolitan Life Ins. Co., 69 N. J. L. 399, 55 Atl. 297, 62 L. R. A. 774, both reaffirming rule; Collins v. Metropolitan Life Ins. Co., 32 Mont. 343, 108 Am. St. Rep. 578, 80 Pac. 612, where premiums payable quarterly and policy prohibited waiver of forfeiture or receipt of premiums except by written authority, insurer not bound by agent's agreement to receive payments several days after due; Rinker v. Aetna Life Ins. Co., 214 Pa. St. 612, 64 Atl. 84, refusing evidence of statements to agent as to surgical operation where agent wrote application which denied operation; Mudley v. German etc. Ins. Co., 55 W. Va. 350, 351, 47 S. E. 105, determining effect of limitation of authority of agent in policy as notice where such clause not read by insured.

Syl. 4 (XI, 121). Retention of policy approves application.

Distinguished in American etc. Ins. Co. v. Bertram, 163 Ind. 57, 70 N. E. 260, 64 L. R. A. 935, upholding right to recover assessments paid by assignee of policy taken out by one not having insurable interest, and bought on false representations of assured's agent as to its validity; Parsons, Rich & Co. v. Lane, 97 Minn. 120, 106 N. W. 495, insurer is not obliged to offer to return premiums involuntarily paid before notice of fact that policy not in force before availing itself of its defense in action on policy.

117 U. S. 536-554, 29 L. 954, YALE LOCK MFG. CO. v. SARGENT.

Syl. 1 (XI, 121). Patentable novelty.

Approved in Rawson etc. Mfg. Co. v. Hunt Service Co., 147 Fed. 241, construing and upholding Johnson patent No. 542,733, for heat regulator.

117 U. S. 567-582, 29 L. 940, HOBBS v. McLEAN.

Syl. 2 (XI, 124). Assignment of government claim—Partnership.

Approved in North Pac. Lumber Co. v. Spore, 44 Or. 472, 75 Pac. 894, determining sufficiency of evidence of intention to form partnership for government contract.

Syl. 4 (XI, 124). Assignment of government claims.

Approved in Nutt v. Knut, 200 U. S. 20, 50 L. 353, 26 Sup. Ct. 216, contract for prosecution of claim against United States making compensation for services lien on claim, is void.

Syl. 5 (XI, 124). Contract open to two constructions.

Approved in Delaware etc. R. Co. v. Kutter, 147 Fed. 62, upholding contract between railroad and plaintiff to develop business of milk

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transportation along road on percentage of freights; Jones v. Patrick, 140 Fed. 405, agreement to co-operate in finding purchaser at advanced price for mine on which one party had option, and to divide profits, is not contract for sale of interest in lands within statute of frauds; dissenting opinion in Green v. Grant, 134 Mich. 472, 96 N. W. 587, majority holding agreement of debtor to pay five per cent interest and taxes not usurious if creditor did not know taxes would exceed two per cent.

Syl. 6 (XI, 125). Government claim—Promise to pay out of proceeds.

Approved in Padilla v. Padilla, 11 N. M. 550, 553, 70 Pac. 565, 566, where brother recovered judgment in own name on Indian depredation claim for property owned jointly with sister, and before judgment agreed to pay sister her share of proceeds, sister could recover her share of proceeds.

Syl. 8 (XI, 125). Party as witness against estate.

Approved in Smith v. Au Gres Twp., 150 Fed. 260, 263, under Rev. St., § 858, witness may, after death of bankrupt, testify as to admissions made by bankrupt concerning his estate while he was owner thereof.

Syl. 11 (XI, 125). Expense of litigation over trust fund.

Approved in McCourt v. Singers-Bigger, 145 Fed. 114, stockholders who by suit in behalf of corporation recover sum wrongfully diverted by officers are entitled to attorney's fees out of such sum, but stockholders resisting suit are not; Lamar v. Hall, 129 Fed. 83, 63 C. C. A. 521, disallowing fees of attorney for minority stockholders in suit, whereby suit by lien creditors alleged to be fraudulent and receiver appointed, who sold property, and on attorney's motion sale set aside and higher price obtained, fraud not being proven.

117 U. S. 582-591, 29 L. 991, BURNES v. SCOTT.

Syl. 1 (XI, 126). Evidence to contradict note.

Approved in Payne v. Mutual Life Ins. Co., 141 Fed. 345, determining bona fides of contract whereby premium note given insurance agent merely to increase apparent amount of his business; French v. French, 133 Fed. 492, 66 C. C. A. 365, arguendo.

Syl. 2 (XI, 126). Evidence of equitable defense to note.

Approved in Levi v. Mathews, 145 Fed. 154, in federal law action to recover money on contract, court cannot entertain answer alleging fraud in procurement of contract.

Syl. 3 (XI, 126). Champerty as defense to contract.

Approved in Robertson v. Cayard, 111 Tenn. 365, 77 S. W. 1058, on repeal of Act 1821, c. 66, relating to champertous contracts, exist-

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ence of champertous contract did not bar suit to which it related, but merely affected validity of agreement.

117 U. S. 591-600, 29 L. 997, NEW YORK ETC. INS. CO. v. ARMSTRONG.

Syl. 1 (XI, 127). Assignment of policy payable to representatives.

Approved in Brooks v. United States, 146 Fed. 231, in prosecution for mailing letters pursuant to fraudulent scheme, letters other than those in indictment are admissible as bearing on intent and existence of scheme; Gordon v. Ware Nat. Bank, 132 Fed. 447, 67 L. R. A. 550, 65 C. C. A. 580, upholding assignment to one not having insurable interest, of insurance policy sold under contract of pledge by insured and beneficiary; Matlock v. Bledsoe, 77 Ark. 64, 90 S. W. 849, administrator cannot attack intestate's assignment of life policy as in fraud of creditors; Rylander v. Allen, 125 Ga. 215, 217, 53 S. E. 1036, 1037, upholding assignment of life policy procured by insured to one not having insurable interest; Coffin v. Ontonagon Circuit Judge, 140 Mich. 425, 103 N. W. 837, grantee of defendant in quieting title suit is "representative" within Comp. Laws 1897, § 496, relating to substituted service; Mechanics' Nat. Bank v. Comins, 72 N. H. 20, 101 Am. St. Rep. 650, 55 Atl. 195, life policy valid in its inception is assignable to one having no insurable interest in life insured if assignment is bona fide and not mere device to cover gambling transaction; Box v. Lanier, 112 Tenn. 401, 79 S. W. 1043, 64 L. R. A. 458, where life policy is payable to wife if she survive assured, otherwise to his representatives, latter not entitled to proceeds where insured killed wife; Canterbury v. Northwestern Mut. Life Ins. Co., 124 Wis. 188, 193, 102 N. W. 1102, 1104, where husband's policy on his life was payable to wife or her administrators and assigns, assignment by husband and wife with insurer's consent valid; dissenting opinion in Box v. Lanier, 112 Tenn. 422, 427, 429, 430, 79 S. W. 1049, 1050, 1051, 64 L. R. A. 458, majority holding where policy payable to wife if she survives assured, otherwise to his representative, latter not entitled to proceeds where insured killed wife; dissenting opinion in Canterbury v. Northwestern Mut. Life Ins. Co., 124 Wis. 200, 102 N. W. 1107, majority holding where policy payable to insured's wife or administrators or assigns, is assigned by insured and wife, assignment is valid.

Syl. 2 (XI, 127). Evidence that assignee killed insured.

Approved in Board Commrs., Clinton Co. v. Davis, 162 Ind. 67, 69 N. E. 683, 64 L. R. A. 942, under statute providing for reward of one furnishing evidence of election bribery, neither vote buyer nor vote seller entitled to reward; Courtemanche v. Supreme Court I. O. F., 136 Mich. 36, 98 N. W. 752, 64 L. R. A. 668, where death caused by voluntary taking of poison to frighten wife into giving insured money but not with intent to cause death, recovery may be had on policy

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excepting assurance against self-destruction; Box v. Lanier, 112 Tenn. 411, 79 S. W. 1046, 64 L. R. A. 458, where life policy payable to wife if she survives assured, otherwise to his representatives, latter not entitled to proceeds where insured killed wife; McAllister v. Fair, 72 Kan. 537, 84 Pac. 113, 3 L. R. A. (N. S.) 726, husband may inherit from wife though he killed her to acquire her property.

Syl. 3 (XI, 128). Procurement of other insurance by assignee.

Approved in Exchange Bank v. Moss, 149 Fed. 344, admitting evidence of acts of cashier of defendant bank in respect to similar transactions, in action to recover money obtained by conspiracy to defraud by means of fake footrace; Olson v. United States, 133 Fed. 854, 67 C. C. A. 21, under indictment for conspiracy to defraud government of lands by illegal entry by person named for defendant's benefit, evidence that defendants induced others to enter other lands under similar circumstances is admissible; Yakima Valley Bank v. McAllister, 37 Wash. 573, 107 Am. St. Rep. 823, 79 Pac. 1122, where in action against indorser defendant alleges indorsement procured by fraud, evidence of similar frauds on others is admissible.

117 U. S. 617-621, 29 L. 1004, LONG v. BULLARD.

Syl. 3 (XI, 129). Debtor's bankruptcy—Secured creditor.

Approved in Paxton v. Scott, 66 Neb. 387, 92 N. W. 612, following rule.

117 U. S. 621-633, 29 L. 946, DISTRICT OF COLUMBIA v. McELLIGOTT.

Syl. 4 (XI, 130). Care required of servant—Notice to overseer.

Approved in Walker v. Scott, 67 Kan. 818, 64 Pac. 616, and Neeley v. Southwestern etc. Oil Co., 13 Okl. 368, 75 Pac. 541, 64 L. R. A. 145, both reaffirming rule; Crookston Lumber Co. v. Boutin, 149 Fed. 683, 684, holding decedent guilty of contributory negligence where he gave notice to master of defect in log carriage and superintendent promised to repair; Bell Telephone Co. v. Detharding, 148 Fed. 374, telephone company not liable for injuries to "trouble finder" sent to investigate trouble and injured by shock caused by crossing of electric wires; Cincinnati etc. Ry. Co. v. Robertson, 139 Fed. 524, determining what is reasonable time to repair machinery after complaint of employee and promise of foreman to repair; Begenish v. Gates, 2 Alaska, 515, where mine employee managing bucket used in hoisting gravel notified foreman of defects in cable but continued to work, he is negligent in not stopping engine to fix rope but attempting to do so while running; Daily v. Fiberloid Co., 186 Mass. 320, 71 N. E. 555, fact that servant told superintendent that plank he had to walk on was warped, and latter said he would see to it, did not excuse former in absence of showing he continued work in reliance on statement of latter.

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117 U. S. 657-665, 29 L. 1026, DAVIESS COUNTY v. DICKINSON.

Syl. 2 (XI, 132). Municipal bonds—Estoppel to show overissue.

Approved in Corbet v. Rocksbury, 94 Minn. 402, 103 N. W. 14, reaffirming principle.

Syl. 3 (XI, 132). Municipal bonds—Overissue bond.

Approved in Schmitz v. Zeh, 91 Minn. 297, 97 N. W. 1052, applying rule to railroad aid bonds.

117 U. S. 665-679, 29 L. 1013, PHILLIPS v. NEGLEY.

Syl. 1 (XI, 133). Correction of judgment after term.

Approved in Ex parte Peeke, 144 Fed. 1020, judgment sentencing for five years on indictment under Rev. St., § 440, containing five counts, is void as to excess of sentence over two years, but prisoner remanded for amendment of judgment; United States v. Four Lorgnette Holders, 132 Fed. 565, judgment of forfeiture of imported goods for defrauding customs laws cannot be vacated on motion after term to permit importer to defend on ground of irregularities in procedure; Matter of Zeckendorf, 7 Ariz. 330, 64 Pac. 493, judgment cannot be vacated on motion after term at which entered.

Syl. 3 (XI, 133). Power over judgment at special term.

Approved in King v. Davis, 137 Fed. 227, and King v. Davis, 137 Fed. 218, both holding judgment in ejectment cannot be vacated after term, on motion for fraud in procurement.

Syl. 4 (XI, 134). Equitable relief against judgment.

Approved in O'Connor v. O'Connor, 142 Fed. 450, 451, federal court cannot, on motion in action at law, vacate judgment of previous term; Hockaday v. Jones, 8 Okl. 163, 56 Pac. 1056, refusing to enjoin execution on judgment rendered without service of process, where inadequacy of law remedy not shown; Froebrich v. Lane, 45 Or. 20, 106 Am. St. Rep. 634, 76 Pac. 352, upholding equity jurisdiction to set aside county court's decree settling administrator's final account procured by fraud; McMahan v. Whelan, 44 Or. 406, 75 Pac. 716, neither judgment of justice court in plaintiff's favor in forcible entry nor its affirmance on appeal estops defendant from suing for specific performance of verbal lease and for injunction against judgment.

117 U. S. 679-683, 29 L. 1024, JACKSON v. LAWRENCE.

Syl. 1 (XI, 134). Absolute deed as mortgage.

Approved in Weiseham v. Hocker, 7 Okl. 254, 54 Pac. 465, where deed absolute given to secure debt and bond executed by grantee for reconveyance on payment of debt secured, both instruments being executed at same time, transaction is mortgage.

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117 U. S. 683-689, 29 L. 1019, ZEIGLER v. HOPKINS.

Syl. 1 (XI, 134). Attaching petition for street improvements.

Distinguished in Denver v. Londoner, 33 Colo. 121, 80 Pac. 122, determining conclusiveness of findings of council as to sufficiency of petition for street improvements.

117 U. S. 689-696, 29 L. 1017, CANTRELL v. WALLICK.

Syl. 1 (XI, 135). Patent for invention and improvement.

Approved in Columbia Wire Co. v. Kokoma etc. Wire Co., 143 Fed. 123, Bates patent No. 365,723, for wire-barbing machine, infringed by machine of Fredrich patent No. 711,303.

Distinguished in Hoe v. Miehle etc. Co., 149 Fed. 214, Read patent No. 688,690, for improvements in bed motions for cylinder press, limited by prior art.

Syl. 2 (XI, 135). Patents—Where devices same.

Approved in Los Angeles Art Organ Co. v. Aeolian Co., 143 Fed. 887, Tremaine & Pain patent No. 552,796, improvements in musical instruments using perforated sheets, infringed by Fleming patent No. 659,442; Charmbury v. Walden, 141 Fed. 377, upholding Charmbury patent No. 717,348, for vamp stay for shoes; Couch Bros. v. Allen Mfg. Co., 140 Fed. 857, upholding Couch patent No. 699,151, for casing for horse collars; Bryce Bros. Co. v. Seneca Glass Co., 140 Fed. 171, holding Schrader patent No. 592,920, for engraving machine for etching glassware, valid and infringed by machine of Schiffbauer patent No. 645,333; Mica Insulator Co. v. Union Mica Co., 137 Fed. 938, upholding Dyer patent No. 483, 646, for process for making artificial mica.

Syl. 3 (XI, 135). Burden of prior use on infringer.

Approved in Scott v. Laas, 150 Fed. 765, affirming Laas v. Scott, 145 Fed. 196, decision of court of appeals of District of Columbia affirming patent office in proceeding involving priority of invention, authorizes preliminary injunction against infringement by unsuccessful contestant; Keasbey etc. Co. v. Philip Carey Mfg. Co., 139 Fed. 577, upholding Hanmore patent No. 545,843, for nonconducting covering for steam pipe; Cleveland Foundry Co. v. Kauffman, 135 Fed. 361, 68 C. C. A. 658, upholding Jeavons patent No. 702,560, for oil-burner; Albright v. Langfeld, 131 Fed. 477, upholding Albright patent No. 439,086, for coin purse.

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118 U. S. 3-10, 30 L. 49, EMERSON v. SENTER.

Syl. 2 (XI, 138). Surviving partner controls firm property.

Approved in People's National Bank v. Wilcox, 136 Mich. 577, 581, 100 N. W. 27, 29, where surviving partner mortgaged partnership assets to meet firm debts, mortgagee had priority over his individual creditors.

Syl. 5 (XI, 139). Assignment for creditors—Omission of assets.

Approved in Dugan v. Beckett, 129 Fed. 58, 63 C. C. A. 498, mortgage of bankrupt's stock not invalidated by fraudulent conduct of mortgagor alone.

118 U. S. 19-22, 30 L. 75, JOHNSTON v. DISTRICT OF COLUMBIA.

Syl. 1 (XI, 140). Municipality's liability for defective sewer.

Approved in Bowden v. Kansas City, 69 Kan. 592, 593, 77 Pac. 575, 66 L. R. A. 181, city liable for unsafe condition of fire station whereby fireman injured; Manning v. Springfield, 184 Mass. 246, 68 N. E. 202, where recovery not allowed, defect being in system of sewer; Harrington v. Woodbridge, 70 N. J. L. 29, 56 Atl. 141, denying relief for damage caused by want of sufficient fall, and capacity in sewer causing water to back up into plaintiff's cellar; Hart v. Neillsville, 125 Wis. 551, 104 N. W. 700, 1 L. R. A. (N. S.) 952, city liable for damage caused by negligent construction of sewer.

118 U. S. 22-25, 30 L. 53, U. S. RIFLE & CARTRIDGE CO. v. WHITNEY ARMS CO.

Syl. 2 (XI, 141). Abandonment of invention—Time and manner.

Approved in Victor Talking Mach. Co. v. American Graph. Co., 140 Fed. 866, fact that invention had been described but not claimed in a prior application does not show abandonment so as to invalidate subsequent patent.

118 U. S. 54-58, 30 L. 60, CAMBRIA IRON CO. v. ASHBURN.

Syl. 2 (XI, 142). Revised Statutes conclusive if clear.

Approved in Benson v. Henkel, 198 U. S. 13, 49 L. 923, 25 Sup. Ct. 569, District of Columbia a district within meaning of Rev. St., § 1014 (U. S. Comp. Stat. 1901, p. 716), though not within meaning of judiciary act of 1789, from which the section was taken.

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Distinguished in Clagett v. Duluth Tp., 143 Fed. 826, General Statutes of 1878 of Minnesota, never having been enacted as a revision, not conclusive.

Syl. 3 (XI, 142). Removal for local prejudice.

Distinguished in Boatmen's Bank v. Fritzlen, 135 Fed. 664, 68 C. C. A. 288, under act of 1887, removal could be had by nonresident defendant, though some of codefendants are residents.

118 U. S. 58-61, 30 L. 72, CASHMAN v. AMADOR ETC. CANAL CO.

Syl. 1 (XI, 143). Collusion to give federal jurisdiction.

Approved in Turnbull v. Ross, 141 Fed. 652, where court directed verdict for defendant, there being strong evidence of collusion.

118 U. S. 73-80, 30 L. 78, CADMAN v. PETER.

Syl. 1 (XI, 143). Clear evidence to prove deed a mortgage.

Approved in New York Life Ins. Co. v. Preston, 142 Mich. 239, 105 N. W. 1132, holding evidence insufficient to show absolute assignment of insurance policy to be collateral security.

118 U. S. 81-86, 30 L. 58, UNITED STATES v. LANDRAM.

(XI, 144.) Miscellaneous. Cited in Ames etc. Co. v. Big Indian etc. Co., 146 Fed. 175, remedy under state statute allowing one action for protection of water right against all persons diverting water from the stream or source enforceable in federal courts.

118 U. S. 86-90, 30 L. 110, UNITED STATES v. WILSON.

Syl. 1 (XI, 144). Possession necessary to quiet title.

Approved in Ashburn v. Graves, 149 Fed. 971, denying equitable jurisdiction of bill by one out of possession to remove cloud on title; Ropes v. Jenerson, 45 Fla. 559, 110 Am. St. Rep. 81, 34 So. 956, purchaser of land at execution sale not in possession cannot maintain bill in equity against one in possession to set aside prior conveyance as fraudulent on creditors; Wallace v. Elm Grove Coal Co., 58 W. Va. 455, 52 S. E. 487, upholding demurrer to bill to remove cloud on title where plaintiff not in possession.

118 U. S. 90-96, 30 L. 115, SPRAIGUE v. THOMPSON.

Syl. 2 (XI, 145). Statute inseparable from void part.

Approved in Cella Com. Co. v. Bohlinger, 147 Fed. 423, 424, statute providing for service of summons on foreign corporations void as to those doing business in state, being invalid as to others; Robert v. Police Court, 148 Cal. 135, 82 Pac. 839, municipal charter giving police courts jurisdiction of all misdemeanors concurrent with superior court entirely void, as under constitution such jurisdiction could not exist concurrently; State v. Cudahy Packing Co., 33 Mont. 188, 82 Pac. 836, Montana statute prohibiting combinations to fix prices and regulate

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production not severable from invalid section exempting persons engaged in horticulture or agriculture from its provisions.

Distinguished in Olsen v. Smith, 195 U. S. 342, 49 L. 229, 230, 25 Sup. Ct. 52, upholding pilotage laws of Texas, though one clause thereof invalid for discrimination.

118 U. S. 97-109, 30 L. 104, CLAY v. FREEMAN.

Syl. 1 (XI, 146). Surviving partner holds till debts paid.

Approved in Linn v. Downing, 216 Ill. 72, 74 N. E. 732, where judgment obtained by firm, revival thereof after death of one partner can be had only in name of survivor and not in name of survivor and deceased's administrator.

118 U. S. 113-119, 30 L. 108, EX PARTE LOTHROP.

Syl. 1 (XI, 147). Arizona county court an inferior court.

Approved in Higgins v. Tax Assessors of Pawtucket, 27 R. I. 408, 63 Atl. 37, constitutional provision giving supreme court jurisdiction to issue prerogative writs does not make statute conferring such power on superior courts unconstitutional.

118 U. S. 120-126, 30 L. 81, UNITED STATES v. NASHVILLE ETC. RY.

Syl. 1 (XI, 147). United States not bound by limitations.

See 109 Am. St. Rep. 151, 152, 164, 171, 182, note.

Syl. 4 (XI, 148). Limitations—Government exemption—Trust funds.

Approved in Eastern State Hospital v. Graves, 105 Va. 152, 52 S. E. 838, action by hospital supported by state for charges in caring for insane person cannot be barred by statute of limitations. See 101 Am. St. Rep. 179, note.

118 U. S. 127-136, 30 L. 112, CONLEY v. NAILOR.

Syl. 4 (XI, 148). Undue influence—Destruction of free agency.

Approved in Wilkie v. Sassen, 123 Iowa, 424, 99 N. W. 125, canceling contract to convey realty for grossly inadequate consideration where grantor of feeble mentality; Stewart v. Lyons, 54 W. Va. 678, 47 S. E. 447, refusing to avoid will on ground of undue influence.

118 U. S. 148-151, 30 L. 190, HOPPER v. CORRINGTON.

Syl. 2 (XI, 149). Unauthorized bonds void in bona fide hands.

Approved in Green Co. v. Shortell, 116 Ky. 126, 75 S. W. 254, where bonds in hands of bona fide purchasers contained no recitals, county not estopped to show conditions of issue not printed in bonds.

Syl. 3 (XI, 149). General averment of authority insufficient.

Approved in Pittsburgh etc. Ry. Co. v. Lightheiser, 163 Ind. 252, 71 N. E. 219, sustaining demurrer to complaint for personal injury in

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being run down by car, facts showing defendant's duty to provide signal light and guard not being alleged. See 97 Am. St. Rep. 833, note.

118 U. S. 161-180, 30 L. 196, GRAHAM v. BOSTON ETC. R. R. CO.

Syl. 2 (XI, 150). Adoption of foreign corporation.

Approved in Russell v. St. Louis etc. Ry. Co., 71 Ark. 455, 457, 75 S. W. 727, 728, foreign corporation complying with Acts 1889, p. 43, may exercise right of eminent domain.

Syl. 9 (XI, 151). Setting aside state court decree.

Approved in Strand v. Griffith, 144 Fed. 831, dismissing bill to set aside decree of foreclosure obtained in state courts on ground of fraud.

118 U. S. 180-193, 30 L. 158, GARDNER v. HERZ.

Syl. 2 (XI, 152). Patent of old process void.

Approved in Lafferty Mfg. Co. v. Acme Ry. etc. Co., 143 Fed. 321, affirming 138 Fed. 730, holding patent for railroad torpedo void, there being only substitution of material; Voightmann v. Weis etc. Co., 133 Fed. 303, holding patent for improvement in fire-proof windows void for want of invention.

118 U. S. 194-196, 30 L. 243, ARROWSMITH v. HARMONING.

Syl. 2 (XI, 153). Fourteenth amendment—Erroneous state decision.

Approved in Glucose Ref. Co. v. City of Chicago, 138 Fed. 211, in suit to enjoin enforcement of ordinance, federal jurisdiction not given by allegation that city exceeded charter powers.

118 U. S. 196-209, 30 L. 98, IRON ETC. MIN. CO. v. ELGIN MIN. CO.

Syl. 1 (XI, 153). Following vein beyond side line.

Approved in Ajax Gold Min. Co. v. Hilkey, 31 Colo. 139, 72 Pac. 450, reaffirming rule; Last Chance Min. Co. v. Bunker Hill etc. Co., 131 Fed. 589, 66 C. C. A. 299, locator had right to location vein extending beyond side lines; Jefferson Min. Co. v. Anchoria etc. Mill Co., 32 Colo. 192, 75 Pac. 1076, where conflict as to dip rights within surface boundaries of two locations, senior location prevailed.

Syl. 2 (XI, 154). Colorado provisions for locating mines.

Approved in Mares v. Dillon, 30 Mont. 132, 75 Pac. 965, holding state statute requiring acts to be done in making location in addition to those required by federal law valid.

Syl. 7 (XI, 155). Act of 1872 requires parallel end lines.

Distinguished in Price v. McIntosh, 1 Alaska, 291, holding valid claim irregular in shape; Central Eureka Mining Co. v. East Central etc. Co., 146 Cal. 151, 153, 79 Pac. 835, 836, as to location made before act of 1872, end lines not required to be parallel.

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118 U. S. 235-241, 30 L. 173, UNITED STATES v. CENTRAL PAC. R. R.

Syl. 1 (XI, 156). Construction of statutes.

Approved in Kitchen v. Southern Ry., 68 S. C. 564, 48 S. E. 8, construing act of 1898, providing that action for wrongful death shall be brought for benefit of heirs at law of distributees.

Syl. 2 (XI, 157). Construction showing unconstitutionality avoided.

Approved in Delaware etc. R. Co. v. Kutter, 147 Fed. 62, construing railroad traffic contract not to be invalid; Green v. Grant, 134 Mich. 472, 96 N. W. 587, mortgagor's agreement to pay five per cent interest and all taxes on mortgage not within provisions of usury statute forbidding more than seven per cent interest, though taxes should exceed two per cent.

118 U. S. 250-255, 30 L. 133, LIBBY v. CLARK.

Syl. 1 (XI, 157). Alienation under Indian treaty.

Approved in Guyatt v. Kautz, 41 Wash. 122, 83 Pac. 11, patent to Indian subject to treaty stipulation imposing conditions confers base or qualified fee.

118 U. S. 256-263, 30 L. 176, SALT LAKE CITY v. HOLLISTER.

Syl. 5 (XI, 158). Corporations liable for torts.

Approved in Stewart v. Wright, 147 Fed. 328, holding bank liable where its officers had aided in conspiracy to defraud; Johnston etc. Co. v. National Bank etc., 4 Okl. 32, 44 Pac. 197, holding bank liable for fraud of managing officer committed in its business.

Syl. 6 (XI, 159). Ultra vires contracts—Restitution allowed.

Approved in Luther v. Wheeler, 73 S. C. 95, 52 S. E. 878, allowing recovery where town officers without authority gave notes for money which was used in public buildings.

Distinguished in In re Waterloo Organ Co., 134 Fed. 344, 67 C. C. A. 255, refusing to allow bonds illegally issued by corporation to be proved against it in bankruptcy; United States S. & L. Co. v. Convent of St. Rose, 133 Fed. 360, holding corporation not estopped to set up its want of power to subscribe for stock in other corporations in suit to cancel such subscriptions.

118 U. S. 264-271, 30 L. 232, PLYMOUTH ETC. MIN. CO. v. AMADOR CANAL CO.

Syl. 1 (XI, 159). Single docketing for appeal and error.

Approved in Lockman v. Lang, 132 Fed. 34, holding single assignment of errors sufficient where both appeal and writ of error taken.

Syl. 2 (XI, 159). Joint tort—Controversies not separable.

Approved in Alabama etc. Ry. Co. v. Thompson, 200 U. S. 215, 50 L. 446, 26 Sup. Ct. 161, in action for wrongful death against railroad

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company and employees, controversy with company not separable; Southern Ry. Co. v. Thomason, 146 Fed. 975, denying petition for removal on ground of "prejudice and local influence" in action for joint tort.

Syl. 3 (XI, 160). Removal—Collusive joinder must be proved.

Approved in Offner v. Chicago etc. R. Co., 148 Fed. 203, and Thomas v. Great Northern Ry. Co., 147 Fed. 86, both denying removal, collusive joinder not being proved; Crawford v. Illinois C. R. Co., 130 Fed. 396, where case removed, fraudulent joinder being proved.

Distinguished in Dishon v. Cincinnati etc. Ry. Co., 133 Fed. 476, 66 C C. A. 345, holding case should be remanded where verified petition showing codefendant to be sham party not denied.

118 U. S. 271-279, 30 L. 170, MULLAN v. UNITED STATES.

Syl. 3 (XI, 160). School patents to mineral lands canceled.

Approved in Southern Pac. R. R. Co. v. United States, 200 U. S. 351, 50 L. 511, 26 Sup. Ct. 296, upholding equity jurisdiction of suit by United States to cancel patents and quiet title to lands.

118 U. S. 279-289, 30 L. 167, CARSON v. HYATT.

Syl. 2 (XI, 161). Removal—State court views record only.

Approved in Madisonville Traction Co. v. St. Bernard Min. Co., 196 U. S. 245, 49 L. 465, 25 Sup. Ct. 251, condemnation proceeding under state statute removable for diversity of citizenship; Shane v. Butte Elec. Ry. Co., 150 Fed. 805, 806, state court must remove case upon petition showing fraudulent joinder filed therein; Helena etc. Co. v. Spratt, 146 Fed. 313, remanding case where whole record showed want of diverse citizenship; Boatmen's Bank v. Fritzlen, 135 Fed. 653, 68 C. C. A. 288, upholding jurisdiction of federal court where record presented for removal showed diversity of citizenship.

118 U. S. 290-321, 30 L. 83, PENNSYLVANIA CO. v. ST. LOUIS ETC. R. R.

Syl. 5 (XI, 162). Filing certificate not acceptance of charter.

Approved in Russell v. St. Louis etc. Ry. Co., 71 Ark. 454, 455, 75 S. W. 727, foreign corporation complying with Acts 1889, p. 43, may exercise right of eminent domain.

Distinguished in Walsey v. Chicago etc. Ry. Co., 147 Fed. 613, corporation formed by consolidation of Iowa and Illinois corporations was corporation of both states.

Syl. 6 (XI, 163). Equity will enforce railroad lease.

Approved in Grand Trunk etc. Ry. Co. v. Chicago etc. Ry. Co., 141 Fed. 795, agreement of railroad lessee for long term to use tracks and terminal facilities of lessor and pay rental on wheelage basis enforceable in equity on ground of avoiding multiplicity of suits.

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Syl. 8 (XI, 163). Railroad has no power to lease.

Approved in Renfrow v. Grimes, 6 Okl. 613, 52 Pac. 391, lease for five years by board for the leasing of school lands in Oklahoma void because beyond legal powers of board, who were restricted to three year leases.

Syl. 9 (XI, 164). Lease ultra vires of lessee void.

Approved in Arkansas v. Choctaw etc. R. Co., 134 Fed. 108, holding rule so definitely settled as not to be federal question giving federal courts jurisdiction.

Syl. 11 (XI, 165). Authority for transportation—Contract does not include lease.

Approved in Smalley v. Atlanta etc. Ry. Co., 73 S. C. 574, 53 S. E. 1001, holding railroad company liable for negligence of lessee.

Syl. 14 (XI, 165). Relief where ultra vires contracts executed.

Approved in Union Bank v. Oxford etc. R. Co., 143 Fed. 200, allowing recovery of price paid for void municipal bonds where seller had represented them to be valid; In re Waterloo Organ Co., 134 Fed. 344, 67 C. C. A. 255, holding bonds issued in consideration of indorsement of note against the corporation's president violates statute forbidding issue except for money or property, and not provable against corporate assets.

Syl. 16 (XI, 166). Performance does not estop rescission.

Approved in Anglo-American etc. Co. v. Lombard, 132 Fed. 737, 743, 68 C. C. A. 89, where one corporation transferred all its assets to another, stockholders of first, by exchanging their stock for stock in latter, not relieved from stockholders' liability, second corporation having no power to acquire stock of first; Stealey v. Kansas City, 179 Mo. 408, 78 S. W. 601, city not liable for injury from defective sidewalk it had constructed outside of city limits.

Distinguished in Weed v. Gainesville R. R. Co., 119 Ga. 596, 46 S. E. 894, bondholders in suit to foreclose railroad mortgage cannot attack as ultra vires contract whereby stock issued to another railroad company which completed construction of road.

118 U. S. 321-346, 30 L. 211, LORING v. PALMER.

Syl. 4 (XI, 167). Delay not bar in equity.

Approved in Von Arnim v. American Tube Works, 188 Mass. 519, 74 N. E. 681, suit by minority stockholder against corporate officers for misappropriation of funds not barred by delay.

118 U. S. 356-374, 30 L. 220, YICK WO v. HOPKINS.

Syl. 2 (XI, 168). State construction not binding.

Approved in Holst v. Savannah etc. Co., 131 Fed. 944, holding void resolution of municipal council granting railroad company right to

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lay track in a street without prior notice or publication; Jamison v. Wimbish, 130 Fed. 362, sentence by police judge of seven months' severe labor on chain-gang, under municipal ordinances for minor offense void under fourteenth amendment.

Syl. 3 (XI, 168). Laundry ordinance within police power.

Approved in State v. Cantwell, 179 Mo. 270, 78 S. W. 576, upholding statute limiting hours of employment in mines to eight hours a day.

Distinguished in In re Smith, 143 Cal. 373, 77 Pac. 182, ordinance prohibiting maintenance of gas plant within certain district void; State v. Brown, 37 Wash. 101, 107 Am. St. Rep. 798, 79 Pac. 637, 68 L. R. A. 889, holding void statute requiring examination and license from dental board for "owning, running and managing a dental office."

Syl. 4 (XI, 169). Fourteenth amendment applies to all races.

Approved in Block v. Schwartz, 27 Utah, 400, 76 Pac. 26, holding void act of 1901, making void sale of entire stock of merchandise in bulk, unless certain conditions complied with; dissenting opinion in United States v. Sing Tuck, 194 U. S. 179, 48 L. 925, 24 Sup. Ct. 621, majority refusing to grant habeas corpus to Chinaman, alleging citizenship, who is refused admission to United States.

Syl. 6 (XI, 170). Ordinance giving arbitrary power invalid.

Approved in Wright v. Hart, 182 N. Y. 358, 75 N. E. 415, 2 L. R. A. (N. S.) 338, McKinster v. Sager, 163 Ind. 679, 680, 106 Am. St. Rep. 268, 72 N. E. 857, 68 L. R. A. 273, and Sellers v. Hayes, 163 Ind. 434, 435, 72 N. E. 123, 124, all holding statute making sale of stock of merchandise otherwise than in course of trade void as against creditors as violating fourteenth amendment; Boyd v. Board of Council, 117 Ky. 208, 111 Am. St. Rep. 244, 77 S. W. 672, holding ordinance requiring consent of municipal common council for erection of building invalid; Mandeville v. Band, 111 La. 809, 35 So. 916, holding penal liquor ordinance prohibiting further granting of privilege within certain distance of churches or schools violates fourteenth amendment; State v. Ramseyer, 73 N. H. 36, 58 Atl. 960, holding void statute prohibiting use of trading stamps; Schnaier v. Navarre Hotel etc. Co., 182 N. Y. 89, 108 Am. St. Rep. 790, 74 N. E. 562, 70 L. R. A. 722, holding statute for licensing of plumbers which requires employers or all members of plumbing firm to be licensed, invalid; Hubbard v. Hubbard, 77 Vt. 80, 107 Am. St. Rep. 753, 58 Atl. 971, 67 L. R. A. 969, holding statute authorizing court of chancery on petition of wife to empower her to convey land by her separate deed invalid; State v. Scampini, 77 Vt. 114, 59 Atl. 208, holding void act regulating sale of liquors excepting from its provisions manufacturers of cider or native wines not to be drunk on premises. See notes, 108 Am. St. Rep. 786, 788; 104 Am. St. Rep. 642.

Distinguished in New York v. Van de Carr, 199 U. S. 559, 562, 50 L. 309, 311, 26 Sup. Ct. 144, holding ordinance requiring milk dealers

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to obtain permit from board of health did not violate fourteenth amendment; Grainger v. Douglas etc. Club, 148 Fed. 520, 521, 527, 530, 531, 536, overruling Douglas etc. Club v. Grainger, 146 Fed. 417, 423, and holding statute creating racing commission with power to license and regulate horseracing valid; Fitts v. Atlanta, 121 Ga. 573, 49 S. E. 796, 67 L. R. A. 803, upholding ordinance prohibiting public meetings in streets without consent of municipal authorities; State v. Durein, 70 Kan. 37, 38, 39, 80 Pac. 995, 996, holding valid statute giving probate judge discretionary power over subject of granting and refusing liquor licenses; Ex parte Boyce, 27 Nev. 339, 75 Pac. 6, 65 L. R. A. 47, upholding statute providing eight-hour day for all workmen in mines, smelters and mills for reduction of ore; State v. Briggs, 45 Or. 369, 375, 77 Pac. 750-752, upholding statute authorizing board of barber examiners to prescribe qualifications for barbers and grant licenses thereunder; Burke v. Collins, 18 S. D. 194, 99 N. W. 1113, upholding statute giving board of county commissioners power to reject liquor license bond of any person known to them to be unfit to conduct liquor business; Harrigan v. Gilchrist, 121 Wis. 220, 99 N. W. 931, upholding § 3052, Rev. St. 1898, of Wisconsin, requiring undertakings to be filed on appeal.

Syl. 7 (XI, 172). Unequal enforcement of law invalid.

Approved in Lochner v. New York, 198 U. S. 64, 66, 49 L. 944, 945, 25 Sup. Ct. 539, holding void statute limiting hours of employment in bakeries to sixty hours a week, and ten hours a day; Dobbins v. Los Angeles, 195 U. S. 240, 241, 49 L. 177, 25 Sup. Ct. 18, holding invalid ordinance restricting limits within which gasworks may be erected; Hume v. Laurel Hill Cem., 142 Fed. 564, 565, holding municipal ordinance prohibiting burial of dead in city and county of San Francisco void; Kentucky v. Powers, 139 Fed. 456, 461, allowing removal of case to federal courts on ground of discrimination against jurors of same political party as defendant in state court; Brown v. Urquhart, 139 Fed. 848, granting habeas corpus to defendant who, upon being acquitted in state court on ground of insanity, had been committed to prison by court as a dangerous person, under statute, without further trial on that question; State v. Cudahy Packing Co., 33 Mont. 186, 82 Pac. 835, holding statute prohibiting combinations for fixing prices or regulating production except as to persons engaged in horticulture or agriculture void under fourteenth amendment.

Distinguished in Owensboro Waterworks Co. v. Owensboro, 200 U. S. 45, 50 L. 364, 26 Sup. Ct. 249, upholding act of municipality in diverting taxes collected for specific object; Ah Sin v. Wittman, 198 U. S. 506, 507, 508, 49 L. 1145, 1146, 25 Sup. Ct. 756, holding conviction of Chinaman under ordinance against gambling not illegal because the ordinance enforced solely against Chinese, where it is not shown that the evil did not exist solely among Chinese; Georgia R. R. etc. Co. v. Wright, 125 Ga. 603, 54 S. E. 58, holding custom of tax-

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payers to return their property at less than its value will not amount to denial of equal protection of law as to person required to pay tax on full value; Kersey v. Terre Haute, 161 Ind. 476, 68 N. E. 1030, upholding ordinance imposing tax on vehicles excepting street-cars, automobiles and vehicles of nonresidents.

118 U. S. 375-385, 30 L. 228, UNITED STATES v. KAGAMA.

Syl. 6 (XI, 173). Indian tribes not nations.

Approved in Gay v. Thomas, 5 Okl. 12, 46 Pac. 582, upholding tax imposed by Oklahoma Territory upon cattle belonging to white persons, and kept grazing on Indian reservation under leases from Indians.

Syl. 8 (XI, 174). Federal act of 1885 valid.

Approved in United States v. Cardish, 145 Fed. 246, affirming 143 Fed. 641, 642, and holding § 2143, Rev. St., in so far as it distinguishes between white persons and Indians in committing crimes on Indian reservation in state repealed by act of 1885; In re Now-ge-zhuck, 69 Kan. 415, 76 Pac. 878, holding act February 8, 1887, for allotment of land of reservation to Indians, confers jurisdiction on state courts to punish allottees for crimes within limits of reservation; State v. Howard, 33 Wash. 256, 258, 74 Pac. 384, 385, holding act of March 3, 1885, c. 341, does not deprive state court of jurisdiction over crimes committed on reservation by Indians not in tribal relation.

Syl. 9 (XI, 174). Indians are wards of nation.

Approved in In re Lincoln, 129 Fed. 248, holding state court without jurisdiction to punish Indian for having deer meat in his possession on Indian reservation in California, contrary to state statute; United States v. Berrigan, 2 Alaska, 450, sustaining suit in name of United States for benefit of Indians to prevent persons from trespassing on land occupied by them; Herd v. United States, 13 Okl. 516, 75 Pac. 292, and Goodson v. United States, 7 Okl. 130, 54 Pac. 427, both holding act of March 3, 1885, did not deprive district court of territory of Oklahoma sitting as United States court of jurisdiction over crimes of persons other than Indians, within reservation; Labadie v. United States, 6 Okl. 415, 51 Pac. 671, holding act of Congress of June 4, 1888, prohibiting cutting of timber on Indian reservation, effective against Indians occupying reservation in tribal relations; Hollister v. United States, 145 Fed. 777, upholding act conferring jurisdiction on federal courts for district of South Dakota to try cases of larceny committed on Indian reservations in that state; United States v. Thurston, 143 Fed. 289, enjoining collection of state taxes on proceeds of sales of Indian lands under act May 27, 1902, which had been deposited in bank to credit of Indians in accordance therewith; McBride v. Farrington, 131 Fed. 801, upholding leases of mineral lands on Indian reservation under authority of tribal laws, there being no contravening acts of Congress.

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118 U. S. 385-389, 30 L. 165, FRANCIS v. FLINN.

Syl. 1 (XI, 176). Conspiracy not enjoined.

Approved in Montgomery, Ward & Co. v. South Dakota etc. Assn., 150 Fed. 418, refusing to enjoin association of retail dealers from carrying out agreement not to purchase from jobbers who sold to catalogue or mail order houses; Empire Transportation Co. v. Johnson, 76 Conn. 83, 55 Atl. 589, refusing to enjoin defendant from replevying coal barges of plaintiff.

118 U. S. 394-417, 30 L. 118, SANTA CLARA CO. v. SOUTHERN PACIFIC R. R.

Syl. 1 (XI, 176). Corporations persons within fourteenth amendment.

Approved in Douglas etc. Club v. Grainger, 146 Fed. 417, upholding state statute creating commission for regulation and licensing of racing corporations; Huber v. Martin, 127 Wis. 434, 105 N. W. 1038, holding reorganization of mutual insurance company under state statute violated fourteenth amendment; dissenting opinion in Hale v. Henkel, 201 U. S. 84, 50 L. 669, 26 Sup. Ct. 370, majority holding fourth amendment of United States constitution will not justify officer of corporation in refusing to produce its books in answer to subpoena duces tecum at grand jury investigation.

Syl. 2 (XI, 177). Federal courts—Validity of state law.

Approved in dissenting opinion in Kingsley v. Merrill, 122 Wis. 205, 99 N. W. 1050, 67 L. R. A. 200, majority holding statute making debts due from solvent debtors taxable to creditor does not violate fourteenth amendment.

Syl. 4 (XI, 178). Assessment partly unauthorized totally void.

Approved in Fargo v. Hart, 193 U. S. 503, 48 L. 767, 24 Sup. Ct. 498, holding assessment against express company which took into account personal property of the company, outside state, in fixing assessment on mileage basis, wholly void.

118 U. S. 425-454, 30 L. 178, NORTON v. SHELBY COUNTY.

Syl. 3 (XI, 179). No de facto officer without office.

Approved in Crowley v. Southern Ry. Co., 139 Fed. 853, where state law creating county court held unconstitutional, suit filed therein and removed to federal court dismissed; People v. Horan, 34 Colo. 332, 86 Pac. 261, where election commission had organized and acted under unconstitutional law, its certificate of the election of person to office of coroner not evidence of that fact in election contest; Clark v. American etc. Coal Co., 165 Ind. 216, 73 N. E. 1084, affirming 35 Ind. App. 71, 75 N. E. 729, and holding corporation created by special act for term which had expired, and which had attempted to continue its existence under an unconstitutional act not a de facto corporation; Matter of O'Berry, 179 N. Y. 287, 72 N. E. 109, where tax paid under void law,

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person to whom it is refunded has right to interest; City of Guthrie v. Territory, 1 Okl. 193, 31 Pac. 192, 11 L. R. A. 418, provisional municipal organizations in Oklahoma, before act of Congress of May 2, 1890, providing territorial government, had no legal existence and their contracts void; Payne v. Staunton, 55 W. Va. 207, 46 S. E. 929, mandamus will not lie to compel clerk of county court to allow inspection of books and papers in his custody under unconstitutional law; dissenting opinion in Prewitt v. Security etc. Ins. Co., 119 Ky. 347, 84 S. W. 531, majority holding state statute providing that if foreign insurance company shall remove a suit from state to federal courts without consent of other parties, its right to do business in state shall be revoked, does not violate federal constitution; dissenting opinion in People v. Ebelt, 180 N. Y. 478, 73 N. E. 237, majority holding a jury drawn and returned under unconstitutional statute a de facto jury.

Distinguished in South Omaha v. O'Rourke, 70 Neb. 482, 97 N. W. 609, a precinct for taxing purposes actually formed and organized, de facto, though meeting of county commissioners at which it was formed not legally held; Muse v. Lexington, 110 Tenn. 667, 76 S. W. 484, upholding bonds issued by town under authority of legislature, though the town had not been legally incorporated.

Syl. 5 (XI, 180). Unconstitutional law absolute nullity.

Approved in Campbell v. Bryant, 104 Va. 516, 52 S. E. 640, enjoining collection of tax by officers of town, the act under which it was incorporated being invalid.

Syl. 6 (XI, 181). Official acts unaffected by illegal appointment.

Approved in Ex parte State, 142 Ala. 89, 110 Am. St. Rep. 21, 38 So. 835, person commissioned by governor as and exercising duties of circuit judge under unconstitutional act, but at time and place where such court could legally be held, was de facto judge; Walker v. State, 142 Ala. 10, 39 So. 242, person acting as judge of state circuit court, though appointed under unconstitutional act, a de facto judge; Powers v. State, 83 Miss. 703, 36 So. 8, special judge appointed for trial of case de facto officer though he had not taken oath of office; Greene v. Rienzi, 87 Miss. 466, 40 So. 18, acts of de facto mayor and board of aldermen in issuing municipal bonds valid.

Syl. 7, (XI, 182). De facto officer defined.

Approved in Monahan v. Lynch, 2 Alaska, 133, upholding appointment of poundmaster by town council, though members of it not legally elected; Haskell v. Dutton, 65 Neb. 275, 91 N. W. 395, deputy county clerk, whose appointment not in writing and who had not complied with law relative to official bond and oath a de facto officer; Morford v. Territory, 10 Okl. 745, 63 Pac. 960, 54 L. R. A. 513, defendant guilty of perjury for false testimony given in prior suit before judge who did not possess the legal qualifications for office; Purdin v. Washington etc. Assn., 41 Wash. 397, 83 Pac. 724, in suit to recover land sold for taxes levied

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by irrigation district, validity of proceedings taken to organize the district cannot be attacked.

Syl. 8 (XI, 182). Ratification of invalid municipal bonds.

Approved in Farmers' etc. Co. v. Sioux Falls, 131 Fed. 912, after adoption of constitutional amendment requiring majority vote of electors present and voting to authorize municipal indebtedness, bonds could not be issued on vote taken before the amendment under law providing majority of electors should be determined by vote cast for mayor at last preceding election; Green Co. v. Shortell, 116 Ky. 134, 75 S. W. 257, fact that county paid interest on bonds does not estop it from showing their invalidity.

118 U. S. 455-467, 30 L. 237, MORGAN ETC. CO. v. LOUISIANA.

Syl. 3 (XI, 183). Quarantine laws not tonnage taxes.

Approved in Chicago etc. Ry. Co. v. Illinois, 200 U. S. 585, 50 L. 606, 26 Sup. Ct. 341, constitutional rights of railroad company not invaded by requiring it to remove and rebuild bridge and culvert made necessary by the widening and deepening of channel by drainage commission acting under state law; Louisville v. Wehmhoff, 116 Ky. 830, 76 S. W. 881, statute against gambling which prohibited telegraph company from furnishing poolrooms with communications concerning horseraces proper exercise of police power; Commonwealth v. Strauss, 191 Mass. 555, 78 N. E. 139, upholding statute prohibiting seller of goods from imposing condition that buyer shall not sell or deal in goods of other persons; St. Louis v. Grafeman Dairy Co., 190 Mo. 504, 89 S. W. 620, ordinance requiring vendors of milk to register and pay registration fee of one dollar does not impose tax, but merely an inspection fee.

118 U. S. 468-506, 30 L. 134, THE CITY OF NORWICH.

Syl. 2 (XI, 185). Limited liability—Appraisement by district court.

Approved in The Twilight, 138 Fed. 1006, where dispute as to value, amount of stipulation for release of libeled vessel will be fixed at highest amount subject to right of claimant to prove value to which libelant's recovery limited.

Syl. 5 (XI, 186). Limited liability not increased by salvage.

Approved in The Pine Forest, 129 Fed. 705, 64 C. C. A. 228, where owners of tug at fault also owned vessels which brought injured barge to port, having performed the service before beginning limited liability proceedings, no compensation for salvage service could be claimed.

Syl. 7 (XI, 186). Limited liability—Insurance not included.

Approved in In re Knickerbocker S. B. Co., 136 Fed. 959, in proceeding to limit liability, interrogatories annexed to answer directed to discovery of assets of petitioner inadmissible.

Distinguished in The Conveyor, 147 Fed. 591, liens for seamen's wages enforceable against insurance money.

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Syl. 9 (XI, 186). Limited liability—Surrender to underwriters.

Approved in The Mauch Chunk, 139 Fed. 753, where in collision both vessels at fault, claim of owner on behalf of insurer subordinate to claims of third persons.

118 U. S. 507-520, 30 L. 153, THE SCOTLAND.

Syl. 4 (XI, 187). Limited liability—Interest discretionary.

Approved in La Conner etc. Co. v. Widmer, 136 Fed. 178, 69 C. C. A. 193, allowing interest on damages caused by delay in transportation of horses; Bethell v. Mellor, 135 Fed. 445, refusing to allow interest on claim for damage to cargo.

Distinguished in Burrows v. Lawnsdale, 133 Fed. 251, 66 C. C. A. 650, interest should not be allowed on damages awarded in admiralty for personal injury.

118 U. S. 520-541, 30 L. 156, THE GREAT WESTERN.

Syl. 3 (XI, 188). Methods of claiming limited liability.

Approved in The Lotta, 150 Fed. 222, limited liability act does not prevent action against vessel for wrongful death in state court, the limitation being admissible as defense there.

118 U. S. 545-557, 30 L. 257, VICKSBURG ETC R. R. v. PUTNAM.

Syl. 2 (XI, 188). Evidence—Superintendent's reports admissible.

Approved in Cleveland etc. Ry. Co. v. Potts, 33 Ind. App. 577, 71 N. E. 690, not error, in action against carrier for failure to deliver goods, to require defendant to produce papers showing its handling of shipment.

Syl. 3 (XI, 188). Judge's comment on facts to jury.

Approved in Pittsburgh Ry. Co. v. Bloomer, 146 Fed. 721, expressing opinion upon the evidence by trial judge in charging jury not error; Parulo v. Philadelphia etc. Ry. Co., 145 Fed. 677, in action for personal injury not error to refuse instruction which had been given in substance.

Syl. 4 (XI, 189). Personal injury—What damages include.

Approved in American China Dev. Co. v. Boyd, 148 Fed. 271, allowing prospective damages in action for breach of contract in discharging plaintiff before his term of employment ended; Southern Cotton Oil Co. v. Skipper, 125 Ga. 372, 54 S. E. 113, plaintiff permanently injured entitled to prospective earnings; dissenting opinion in Davenport v. Southern Ry. Co., 135 Fed. 967, 68 C. C. A. 444, majority remanding to state court action for personal injury against railroad company and employees on ground of joint tort, though measure of damages not same against employer as employees.

Distinguished in Eichorn v. New Orleans etc. Co., 114 La. 720, 38 So. 529, in action under statute for wrongful death, prospective earnings not allowed.

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Syl. 5 (XI, 189). Evidence—Life and annuity tables.

Approved in Reynolds v. Narragansett Elec. L. Co., 26 R. I. 461, 59 Atl. 394, reaffirming rule; Scott v. Astoria R. R. Co., 43 Or. 42, 99 Am. St. Rep. 710, 72 Pac. 599, 62 L. R. A. 543, in action for personal injury caused by railroad landslide, scientific witness could testify as expert regarding proper slope for cuts and name scientific writers who supported his opinion; Hyland v. Southern Bell Tel. Co., 70 S. C. 325, 49 S. E. 881, admitting mortality table in action for injuries to living person where there is evidence that injuries are permanent.

118 U. S. 557-596, 30 L. 244, WABASH ETC. RY. CO. v. ILLINOIS.

Syl. 6 (XI, 191). State law burdening interstate commerce void.

Approved in People v. Miller, 178 N. Y. 198, 204, 70 N. E. 473, 475. franchise tax on carrier engaged entirely in interstate commerce void.

Syl. 7 (XI, 191). Interstate commerce defined.

Approved in Northern Securities Co. v. United States, 193 U. S. 378, 48 L. 717, 24 Sup. Ct. 436, upholding anti-trust act of July 2, 1890, though held to include combination of stockholders of two competing railroads to form holding corporation to control each road; Davis v. Cleveland etc. Ry. Co., 146 Fed. 410, cars of railroad company while being carried over roads of other companies in other states for continuous carriage of freight not subject to attachment under state law; Globe Elevator Co. v. Andrew, 144 Fed. 879, holding void statute of Wisconsin providing for inspection and grading of grain stored or shipped at certain point.

Distinguished in Howard v. Illinois C. R. Co., 148 Fed. 999, 1000, holding act of Congress of June 11, 1906, making common carrier liable to employee for injuries caused by negligence of its agents or employees, invalid as not within commerce clause.

Syl. 8 (XI, 192). State regulation on interstate commerce.

Approved in Hart v. State, 100 Md. 608, 612, 60 Atl. 461, 462, holding state statute requiring carriers to provide separate coaches for white and colored passengers invalid.

118 U. S. 596-608, 30 L. 269, LITTLE v. GILES.

Syl. 1 (XI, 194). Joint tort action not removable.

Approved in Alabama etc. Ry. Co. v. Thompson, 200 U. S. 215, 216, 50 L. 446, 447, 26 Sup. Ct. 161, and Knuth v. Butte Elec. Ry. Co., 148 Fed. 75, both holding in joint action for personal injury against railway company and employee no separable controversy for purpose of removal; City of Cleveland v. Cleveland etc. Ry. Co., 147 Fed. 176, where plaintiff in ejectment joined lessee in possession, and lessor as defendants, neither controversy is separable; Elkins v. Howell, 140 Fed. 159, in suit for specific performance of contract for sale of land against vendor and his subsequent grantees, controversy with latter separable; Lathrop etc. Co. v. Pittsburg etc. R. Co., 135 Fed. 620, suit against construction com-

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pany and railroad on contract made with former, complaint alleging it acted as agent for latter does not contain separable controversy.

Distinguished in Manufacturers' Com. Co. v. Brown Alaska Co., 148 Fed. 310, where in suit on note maker and several indorsers joined under state statute, controversy with each separable; Lucas v. Milliken, 139 Fed. 825, in suit for specific performance of contract for sale of stock in corporation, fact that the corporation, a citizen of same state as complainant, was joined as defendant does not prevent removal; Cella v. Brown, 136 Fed. 443, in suit for specific performance of agreement for transfer of corporate stocks and bonds, defendant bank, which merely acted as agent of parties in transaction, not necessary party; Boatmen's Bank v. Fritzlen, 135 Fed. 661, 662, 68 C. C. A. 288, suit to avoid prior mortgage for fraud and to foreclose second mortgage involved separable controversies, and first mortgagee entitled to removal.

Syl. 2 (XI, 194). No jurisdiction where collusive joinder.

Approved in Steigleder v. McQuesten, 198 U. S. 142, 49 L. 987, 25 Sup. Ct. 616, where suit dismissed on motion, evidence showing diversity of citizenship not to exist; Kreider v. Cole, 149 Fed. 656, dismissing bill filed for appointment of receiver of corporation where bonds and stock had been assigned to citizen of another state to give federal jurisdiction.

118 U. S. 608-610, 30 L. 259, NEW YORK EL. R. R. CO. v. FIFTH NAT. BANK.

Syl. 1 (XI, 195). Amount final judgment determines jurisdiction.

Approved in Oliver v. Love, 104 Mo. App. 84, 78 S. W. 338, in action on note, defendant, having filed counterclaim and had verdict thereon, was entitled to interest from verdict to rendition of final judgment.

118 U. S. 610-626, 30 L. 274, EX PARTE PHENIX INS. CO.

Syl. 1 (XI, 195). Limited liability—Damage caused ashore.

Approved in The San Rafael, 134 Fed. 752, allowing limited liability where libelant was injured while on ferryboat owned and operated by railroad company in connection with its line.

Syl. 2 (XI, 196). Prohibition where no jurisdiction.

See 111 Am. St. Rep. 934, 944, note.

Syl. 3 (XI, 196). Damage ashore—No admiralty jurisdiction.

Distinguished in United States v. Evans, 195 U. S. 364, 368, 49 L. 236, 238, 25 Sup. Ct. 46, holding admiralty court had jurisdiction of action against vessel for destruction of beacon standing in fifteen or twenty feet of water built on piles.

118 U. S. 655-663, 30 L. 266, WHITNEY v. BUTLER.

Syl. 2 (XI, 198). Stockholder's liability ends with transfer.

Approved in Hunt v. Seeger, 91 Minn. 267, 98 N. W. 92, bank stockholder not liable where he had assigned stock and requested bank officer to make transfer on books, which latter neglected to do.

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Distinguished in McDonald v. Dewey, 202 U. S. 520, 50 L. 1133, 26 Sup. Ct. 731, affirming 134 Fed. 533, 534, 67 C. C. A. 408, holding stockholder liable where he had not done everything necessary to effect transfer.

118 U. S. 663-682, 30 L. 285, HARKNESS v. RUSSELL.

Syl. 1 (XI, 199). Conditional sale—Right of retaking.

Approved in Freed Furniture etc. Co. v. Sorensen, 28 Utah, 428, 430, 431, 432, 433, 107 Am. St. Rep. 737, 738, 740, 79 Pac. 566, 567, 568, and Studebaker Bros. Co. v. Mau, 13 Wyo. 367, 110 Am. St. Rep. 1001, 80 Pac. 153, both holding agreement of sale whereby title to remain in vendor until payment, with right to retake and sell on default, with obligation for price absolute, is conditional sale and not mortgage.

Syl. 3 (XI, 199). Purchaser of conditional vendee gets title.

Approved in In re Rasmussen's Estate, 136 Fed. 705, goods delivered to purchaser for purpose of sale in usual course of his business pass to trustee in bankruptcy; State v. Fidelity etc. Co., 35 Tex. Civ. 220, 80 S. W. 547, municipal bonds and securities acquired situs for purposes of taxation in state other than that of owner's domicile.

Syl. 4 (XI, 199). Conditional sale valid against creditors.

Approved in Southern Pine Co. v. Savannah Trust Co., 141 Fed. 807, where goods sold to be paid for on delivery were delivered to president of buying company merely to be checked up before payment, and were used and not paid for, no title passed; Tilford v. Atlantic Match Co., 134 Fed. 927, boiler delivered to match company on conditional sale not subject to lien of prior mortgage by company of all its property then owned and thereafter to be acquired; Kester v. Schuldt, 11 Idaho, 669, 85 Pac. 976, allowing conditional vendor to recover property levied on as property of vendee; Mark Means Transf. Co. v. Mackinzie, 9 Idaho, 172, 73 Pac. 137, and Barton v. Groseclose, 11 Idaho, 230, 81 Pac. 624, both holding conditional vendor could not attach property of vendee for purchase price; Bunday v. Columbus Machine Co., 143 Mich. 13, 106 N. W. 398, in action for breach of warranty, that title had not passed, goods having been delivered under conditional sale; Central Loan etc. Co. v. Campbell etc. Co., 5 Okl. 412, 49 Pac. 53, attachment of property in hands of vendor under conditional sale as property of vendee invalid.

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119 U. S. 1-44, 30 L. 306, CHOCTAW NATION v. UNITED STATES.

Syl. 3 (XI, 202). Indian treaties liberally construed.

Approved in United States v. Winans, 198 U. S. 381, 49 L. 1092, 25 Sup. Ct. 662, fishing rights secured to Yakima Indians by treaty of 1859 survive private acquisition of shore lands by state or federal grants; In re Heff, 197 U. S. 498, 499, 49 L. 852, 853, 25 Sup. Ct. 506, 29 Stat. 506, c. 109, penalizing sale of liquor to Indian within state to whom allotment made does not apply to sale to Indian to whom allotment made under 24 Stat. 388, c. 119, giving allottees privileges of citizenship; Winters v. United States, 143 Fed. 746, treaty of May 1, 1888, with Indians of Ft. Belknap reservation, reserved for use of Indians portion of Milk river waters for irrigation purposes.

119 U. S. 47-52, 30 L. 303, WHITE v. DUNBAR.

Syl. 1 (XI, 203). Patent reissue.

Approved in Milloy Elec. Co. v. Thompson etc. Elec. Co., 148 Fed. 846, 847, Van Depoeli reissue No. 11,872, for traveling contract for electric railways is void for delay in application; Cleveland Foundry Co. v. Detroit etc. Stove Co., 131 Fed. 749, holding void Jeavous patent No. 475,401, for oil-burner.

Syl. 2 (XI, 203). Patents—Claim as disclaimer of omissions.

Approved in Victor Talking Mach. Co. v. American Graphophone Co., 145 Fed. 191, Berliner patent No. 548,623, for duplicate sound records, limited and not infringed; Koerner v. Deuther, 143 Fed. 545, upholding Koerner patent No. 392,735, for printers' drying rack; Cincinnati Ry. Supply Co. v. American Hoist etc. Co., 143 Fed. 325, limiting Crosby patent No. 388,840, for wire rope clamp; Jewell Filter Co. v. Jackson, 140 Fed. 344, construing Jewell patent No. 509,126, claim 6, for improvements in filters; Marlin Firearms Co. v. Dinnan, 139 Fed. 659, Hepburn patent No. 584,177, for magazine gun, valid and infringed; Cleveland Foundry Co. v. Detroit Vapor Stove Co., 131 Fed. 744, holding void Jeavous patent No. 475,401, for oil-burner; Lanyon Zinc Co. v. Brown, 129 Fed. 915, 64 C. C. A. 344, limiting Brown patent No. 471,264, for ore-roasting furnace, and holding it not infringed by furnace of Caffeau patent No. 691,112.

119 U. S. 55-73, 30 L. 330, BUETZ v. NORTHERN PAC. RY.

Syl. 3 (XI, 205). Approval of Indian treaty.

Distinguished in United States v. Choctaw etc. R. R. Co., 3 Okl. 498, 502, 41 Pac. 760, 761, approval of Secretary of Interior not necessary

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to right of railroad to construct and locate line under act of Congress, February 18, 1888.

Syl. 6 (XI, 205). Railroad grant—Definite location.

Approved in Kneeland v. Korter, 40 Wash. 367, 82 Pac. 611, 1 L. R. A. (N. S.) 745, where tide lands within place limits of Northern Pacific grant surveyed and defined, and railroad performed conditions prior to admission of state, railroad entitled to land though patent not issued till after constitution adopted.

Syl. 10 (XI, 206). Railroad grant—Preliminary designation.

Approved in Northern Lumber Co. v. O'Brien, 139 Fed. 622, construing Northern Pacific grant of 1864.

119 U. S. 96-99, 30 L. 362, PALMER v. HUSSEY.

Syl. 2 (XI, 208). Bankruptcy—Fiduciary debts.

Approved in Barrett v. Prince, 143 Fed. 304, releasing on habeas corpus bankrupt held on capias in action to recover value of property embezzled while acting as stockbroker; In re Harper, 133 Fed. 974, officers of private corporations are included within Bankr. Act 1898, § 17, cl. 4, excepting release of debts created by embezzlement; Reeves v. McCracken, 69 N. J. Eq. 206, 60 Atl. 333, debt arising out of implied understanding on conveyance of realty not excepted from bankruptcy discharge.

(XI, 208.) Miscellaneous. Cited in Cavanaugh v. Finley, 94 Minn. 509, 110 Am. St. Rep. 386, 103 N. W. 713, bankrupt against whom judgment rendered after his adjudication and before discharge, is entitled to perpetual stay of execution.

119 U. S. 99-109, 30 L. 299, VICKSBURG ETC. RY. v. O'BRIEN.

Syl. 2 (XI, 209). Memoranda as evidence.

Approved in Inman v. Dudley etc. Lumber Co., 146 Fed. 456, letter from agent to principal reporting interview between agent and third party is inadmissible.

Syl. 3 (XI, 209). Unsworn statements prepared prior to trial.

Approved in Fallon v. Rapid City, 17 S. D. 578, 97 N. W. 1011, where law does not require presentation of claim for damages against city, sworn statement of injury presented to council is inadmissible.

Syl. 4 (XI, 209). Reversal—No substantial injury.

Approved in Inman v. Dudley etc. Lumber Co., 146 Fed. 452, in action for breach of contract to sell all lumber on hand, and entire cut for certain year, by failure to deliver lumber, exclusion of evidence to show quantity actually cut in that year reversible error; Armour v. Russell, 144 Fed. 616, reversing for erroneous charge as to duty of master to furnish safe appliances; National Biscuit Co. v. Nolan, 138 Fed. 9, 70 C. C. A. 436, reversing where plaintiff in action for per-

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sonal injuries was permitted to testify that she depended on herself for support; Union Pac. R. Co. v. Field, 137 Fed. 18, 69 C. C. A. 536, reversing for objectionable argument of counsel.

Syl. 6 (XI, 209). Agent's declarations—Res gestae.

Approved in Walker Mfg. Co. v. Knox, 136 Fed. 343, 69 C. C. A. 160, in action for services on sale of materials, admission of conversation between plaintiff and defendant's vice-president during time materials sold, but after latter left employ was prejudicial error; Allington etc. Mfg. Co. v. Detroit Reduction Co., 133 Mich. 436, 95 N. W. 565, in action by seller for price of machine sold to corporation, admissions of director as to matters not res gestae not binding on corporation, though he supervised installation; Balding v. Andrews, 12 N. D. 273, 96 N. W. 307, statement of elevator agent while elevator burning in answer to query as to cause of fire is inadmissible; Gosa v. Southern Ry., 67 S. C. 362, 45 S. E. 816, in action for personal injuries declarations of bystander after accident not res gestae; Stevens v. Friedman, 58 W. Va. 84, 51 S. E. 135, in action for damages for assault and battery, record of acquittal of such charge not admissible.

Syl. 7 (XI, 210). Res gestae—Engineer's statement as to speed.

Approved in The Saranac, 132 Fed. 942, in action for injuries to stevedore by falling down hatchway, statement by mate ten minutes after accident that hatch covers never did fit is inadmissible; Havens v. Rhode Island Suburban Ry. Co., 26 R. I. 53, 58 Atl. 249, in action against railway for injuries to conductor, declarations by manager made next day to foreman of car-barns is inadmissible; Waggoner v. Snody, 36 Tex. Civ. 519, 82 S. W. 358, in action for loss of horses driven off by defendant's employees, evidence of statement of employee while driving horses that if again found on land they would be scattered so they would never be found is admissible; Cook v. Stimson Mill Co., 36 Wash. 39, 78 Pac. 40, in action for injuries to child while riding on engine, statement of superintendent made next day not admissible.

119 U. S. 110-129, 30 L. 342, PHILADELPHIA FIRE ASSN. v. NEW YORK.

Syl. 2 (XI, 211). Corporations as citizens.

Approved in Kirven v. Virginia etc. Chemical Co., 145 Fed. 292, determining effect of noncompliance by foreign corporation with state laws on right to enforce contracts.

Syl. 3 (XI, 211). State restraint of foreign corporations.

Approved in State v. Kansas etc. Gas Co., 71 Kan. 791, 81 Pac. 509, following rule in quo warranto to oust foreign corporation from state; Attorney General v. Booth, 143 Mich. 102, 106 N. W. 872, upholding Laws 1899, p. 409, to prevent trusts and monopolies and providing for revocation of certificates of foreign corporations violating same; Pollock v. German Fire Ins. Co., 132 Mich. 227, 93 N. W. 437,

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upholding statute relating to foreign insurance companies and defining word "agent"; State v. Fleming, 70 Neb. 524, 97 N. W. 1063, construing Laws 1903, c. 73, taxing foreign corporations; Fisher v. Traders' etc. Ins. Co., 136 N. C. 223, 48 S. E. 669, upholding Pub. Laws, p. 66, authorizing service on foreign corporations by delivery of process to secretary of corporation commission; dissenting opinion in Security etc. Ins. Co. v. Prewitt, 202 U. S. 261, 50 L. 1020, 26 Sup. Ct. 619, majority upholding state law providing that foreign insurance company removing suit to federal court shall have license revoked.

119 U. S. 149-152, 30 L. 376, MINNEAPOLIS ETC. RY. v. COLUMBUS ROLLING MILLS.

Syl. 2 (XI, 213). Acceptance on different terms.

Approved in McNicol v. New York Life Ins. Co., 149 Fed. 143, applying rule to application for life insurance; Baird v. Pratt, 148 Fed. 826, where drummer sends order for goods subject to firm's acceptance and latter ships goods with invoice, making terms of payment different from order, purchaser may refuse goods; Cella v. Brown, 144 Fed. 762, no implied trust arises on mere promise to execute agreement on condition that promisee execute collateral agreement which he refuses to do; Kelley, Maus & Co. v. Sibley, 137 Fed. 588, 69 C. C. A. 674, construing contract for sale and delivery of bolts; Johnston v. Fairmont Mills, 129 Fed. 78, 63 C. C. A. 516, applying rule to offer by broker to sell cotton for future delivery; Metropolitan Coal Co. v. Boutell etc. Co., 185 Mass. 395, 70 N. E. 422, offer to charter vessel beginning before November 1st and continuing till May 1st is varied by acceptance fixing period from November 1st to May 1st; Kileen v. Kennedy, 90 Minn. 415, 97 N. W. 127, applying rule to contract to sell standing timber; Brophy v. Idaho Produce etc. Co., 31 Mont. 286, 78 Pac. 495, order for choice potatoes not acceptance of proposal to sell nice white potatoes; Henry v. Black, 213 Pa. 627, 63 Atl. 253, refusing specific performance where holder of option to purchase land made offer to purchase on terms different from option, though part of consideration paid and later offer to purchase under terms of option made; Tilton v. Sterling Coal etc. Co., 28 Utah, 179, 77 Pac. 760, 107 Am. St. Rep. 689, construing correspondence with reference to acceptance of option in water lease to purchase on expiration of lease. See 110 Am. St. Rep. 759, note.

Distinguished in Gillette v. Peabody, 19 Colo. 367, 75 Pac. 21, statement in proposal to publish reports that if work awarded to bidder, work would be done in state by union labor, is not variance from state's offer containing no such stipulation.

119 U. S. 156-176, 30 L. 396, HANRICK v. PATRICK.

Syl. 10 (XI, 215). Death of principal revokes agency.

See 110 Am. St. Rep. 861, note.

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Syl. 12 (XI, 215). Warranty—Estoppel—After-acquired title.

Approved in Henderson v. Beatty, 124 Iowa, 167, 99 N. W. 718, where defendant agreed to convey right, title and interest, subsequent clause agreeing to deliver warranty deed on payment of price does not require conveyance in fee. See 105 Am. St. Rep. 862, note.

119 U. S. 185-190, 30 L. 372, FREEMAN v. ALDERSON.

Syl. 2 (XI, 216). Action quasi in rem—Parties.

Approved in Whitney v. Wenman, 140 Fed. 960, order of bankruptcy court passing receiver's accounts in which he has credited himself with property surrendered to claimants does not bar suit by trustee to recover same; Schuler v. Ford, 10 Idaho, 747, 109 Am. St. Rep. 233, 80 Pac. 221, one in possession of land under contract to purchase is not in privity with seller so as to be bound by judgment affecting property in action brought after contract; Silver Camp Mining Co. v. Dickert, 31 Mont. 498, 78 Pac. 970, service of summons by publication on nonresident does not warrant judgment in personam; Andrews v. Guayaquil etc. Ry. Co., 69 N. J. Eq. 212, 215, 60 Atl. 568, 569, applying rule in upholding jurisdiction over proceedings to compel transfer of shares in New Jersey corporation owned by nonresident; Hill v. Henry, 66 N. J. Eq. 156, 157, 160, 57 Atl. 556, 557, 558, P. L., p. 514, providing for publication against unascertained heirs, does not apply to action to determine adverse claims to realty; Silvey v. Tift, 123 Ga. 808, 51 S. E. 750, 1 L. R. A. (N. S.) 386, arguendo.

Syl. 3 (XI, 216). Property of nonresidents—Debts—Resident creditors.

Approved in Kerns v. McAulay, 8 Idaho, 565, 69 Pac. 540, following rule; Salemonson v. Thompson, 13 N. D. 194, 101 N. W. 323, judgment against nonresident where jurisdiction rests only on service by publication and attachment of defendant's property is conclusive as to debtor's interest in attached property; Greenway v. De Young, 34 Tex. Civ. 585, 79 S. W. 605, in foreclosure where citation had by publication and default, judgment rendered personal deficiency judgment is void.

Syl. 5 (XI, 217). Process by publication—Nonresidents.

Approved in Hildreth v. Thibodeau, 186 Mass. 84, 104 Am. St. Rep. 560, 71 N. E. 111, where nonresidents were served personally in other state, and they appeared specially to attack jurisdiction, court could not proceed in personam; Smith v. Colloty, 69 N. J. L. 371, 55 Atl. 807, in action under mechanic's lien law, P. L. 1898, pp. 547, 548, judgment in personam against nonresident builder may be rendered where he appears generally.

Syl. 6 (XI, 217). Costs against nonresident—Attachment.

Approved in Baker v. Jewell, 114 La. 736, 38 So. 535, court of domicile of marriage cannot, in divorce against nonresident husband

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constructively served, render decree for alimony and costs; Hill v. Henry, 66 N. J. Eq. 154, 57 Atl. 555, P. L., p. 514, relating to service by publication against unascertained heirs, does not apply to action to determine adverse claims to realty.

119 U. S. 199-214, 30 L. 358, THE HARRISBURG.

Syl. 1 (XI, 218). Action for wrongful death—Admiralty.

Approved in The Lotta, 150 Fed. 220, fact that extent of liability of vessel for death due to negligence was determined in ex parte proceeding in federal court is no ground for enjoining state suit to recover amount of such limited liability; The City of Belfast, 135 Fed. 209, under Pa. Act 1851, §§ 18, 19, where stevedore filed libel against ship for personal injuries, libel could be continued in name of personal representatives.

Distinguished in In re Clyde S. S. Co., 134 Fed. 99, 100, upholding admiralty jurisdiction of suit for wrongful death from vessel at fault in collision on high seas, where right of action for wrongful death given by statutes of state where both vessels belong.

Syl. 2 (XI, 218). Admiralty—Wrongful death—State statutes.

Approved in Quinette v. Bisso, 136 Fed. 838, 69 C. C. A. 825, action for wrongful death based on Civ. Code La., art. 2315, is governed by local law with respect to contributory negligence; Negaubauer v. Great Northern Ry. Co., 92 Minn. 185, 99 N. W. 621, action for wrongful death occurring in Montana must be brought within time limited by Montana statute.

Syl. 3 (XI, 219). Limitations in new statute.

Approved in Davis v. Mills, 194 U. S. 454, 48 L. 1070, 24 Sup. Ct. 692, limitations prescribed by Mont. Code Civ. Proc., § 554, for enforcement of liability for corporate debts against directors, not void as to actions outside state on liability created prior to act; Peters v. Hanger, 134 Fed. 589, 67 C. C. A. 386, where defendant in infringement suit seeks recovery under amendment of 1897 to Rev. St., § 4921, because infringements committed six years prior to suit, he has burden of proof, which may be done under general issue; Poff v. New England Tel. & Tel. Co., 72 N. H. 165, 55 Atl. 892, action for injuries resulting in death not brought within time limited by Pub. St. 1891, c. 191, § 10, is barred; Kennedy v. Delaware Cotton Co., 4 Penne (Del.) 481, 58 Atl. 826, father cannot recover for death of minor child; Ross v. Kansas City etc. Ry. Co., 34 Tex. Civ. 587, 79 S. W. 627, applying rule where railroad incorporated in state other than that creating statutory remedy and its road extends through such state; Savings Bank v. Powhatan Clay Mfg. Co., 102 Va. 278, 46 S. E. 295, bill to enforce mechanic's lien must allege that it is brought within six months after whole claim payable.

Distinguished in dissenting opinion in Hawley v. Griffin, 121 Iowa, 681, 92 N. W. 117, majority holding proceedings by heirs of owner

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of land, who was insane, to redeem for taxes and to vacate decree quieting title, must be commenced within one year of owner's death.

119 U. S. 226-234, 30 L. 369, HAPGOOD v. HEWITT.

Syl. 1 (XI, 220). Patents—Inventor employed to improve.

Approved in Pressed Steel Car Co. v. Hansen, 137 Fed. 407, 415, 2 L. R. A. (N. S.) 1172, reaffirming rule; Bowers v. Lake Superior Contracting etc. Co., 149 Fed. 986, where license authorizing use of inventions on payment of royalties not assignable, but later licensee requested authorization of assignment, which was granted on certain conditions, which were not fulfilled, assignee is liable for royalties; Hildreth v. Duff, 143 Fed. 141, contract of employment by which servant agrees to devote services to perfecting candy machine and to give employer benefit of inventions, is not assignment; Shepherd v. Deitsch, 138 Fed. 84, personal license by patent to make and vend article and reserving right to license another is not assignment, and licensee not necessary party plaintiff to infringement suit; Hygienic etc. Underwear Co. v. Way, 133 Fed. 250, applying rule where employee invented muffler which employer used and continued so to use after employee left employment and commenced sale of article under nearly same name; Barber v. National Carbon Co., 129 Fed. 372, 64 C. C. A. 40, holding plea to infringement bill set out defense of license; Rowell v. Rowell, 122 Wis. 20, 99 N. W. 479, where patent issued to individual while in employ of firm, firm's perpetual implied license to manufacture not transferable at sale of firm's assets in settlement of estate of deceased partner.

119 U. S. 237-240, 30 L. 380, CONTINENTAL INS. CO. v. RHOADS.

Syl. 1 (XI, 221). Jurisdiction must affirmatively appear.

Approved in Cochran v. Pittsburg etc. R. Co., 150 Fed. 683, failure to allege citizenship of plaintiff at time of filing suit as well as at time of filing amended bill is fatal.

119 U. S. 240-244, 30 L. 382, EAST TENNESSEE ETC. RY. CO. v. GRAYSON.

Syl. 1 (XI, 222). Corporations—Stockholders—Separable controversy.

Approved in Groel v. United Elec. Co., 132 Fed. 258, 262, 265, suit by stockholder against his corporation and corporation of another state for recovery of secret profits received by latter in promotion of first corporation not removable.

Syl. 2 (XI, 222). Removal—Separable controversy—Pleadings.

Approved in Alabama etc. Ry. Co. v. Thompson, 200 U. S. 216, 50 L. 447, 26 Sup. Ct. 161, suit for personal injuries against foreign corporation and its servants is removable by corporation irrespective of citizenship of servants.

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119 U. S. 280-285, 30 L. 393, HAMILTON v. VICKSBURG ETC. RY. CO.

Syl. 1 (XI, 224). Railroad bridge over navigable river.

Approved in Kansas City etc. R. R. Co. v. Wiygul, 82 Miss. 225, 231, 33 So. 965, 967, 61 L. R. A. 578, railroad authorized by state to bridge navigable river may make necessary repairs.

Syl. 2 (XI, 224). Bridges must be safe.

Approved in Rogers Sand Co. v. Pittsburg etc. Ry. Co., 139 Fed. 8, 9, 10, 11, following rule.

Syl. 3 (XI, 224). Admission of state—Navigable waters.

Approved in Manigault v. Springs, 199 U. S. 479, 50 L. 278, 26 Sup. Ct. 127, state constitutional provision that all navigable waters shall remain public highways does not prevent legislature from authorizing dam to drain lowlands.

Syl. 4 (XI, 224). Damages—Bridges—Obstruction of navigation.

Distinguished in Pharr v. Morgan's etc. S. S. Co., 115 La. 143, 38 So. 945, where railroad drawbridge broken by negligence of railroad and navigable channel closed by piling put in to repair it, original breaking is primary cause of injury caused by obstruction of channel.

119 U. S. 312-322, 30 L. 416, WOOD v. FORT WAYNE.

Syl. 2 (XI, 225). Compensation—Change in plans.

Approved in Kilby Mfg. Co. v. Hinchman etc. Fire Proofing Co., 132 Fed. 961, 66 C. C. A. 67, determining question of estoppel from enforcing provisions of building contract with reference to extras.

Distinguished in Allen v. Melrose, 184 Mass. 5, 67 N. E. 1062, where sewer contract fixes price for excavations to greater depth than required by profiles, alteration by lowering grade one foot at outlet is not such radical change as to entitle contractor to extra compensation.

119 U. S. 322-326, 30 L. 392, CLARK v. WOOSTER.

Syl. 1 (XI, 226). Infringement suit—Patent nearly expired.

Approved in Huntington etc. Pulverizing Co. v. Virginia etc. Chemical Co., 130 Fed. 560, following rule; Miller v. Schwarner, 130 Fed. 563, denying equity jurisdiction over infringement suit where process not issued till six days prior to expiration of patent and returnable thereafter and no preliminary injunction asked.

Syl. 2 (XI, 226). Expiration of patent pending suit.

Approved in State v. Sunapee Dam Co., 72 N. H. 123, 55 Atl. 904, where appellate court, in suit to restrain dam owner from operating it so as to injure other shore owners, held allegations of nuisance made in good faith, denial of injunction does not oust equity court of power to ascertain damages.

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Syl. 3 (XI, 226). Equity—Dismissal of bill.

Distinguished in Johnson v. Foos Mfg. Co., 141 Fed. 75, fact that defendant in infringement suit has made and sold but one machine and that pending suit purchaser licensed by complainant not ground for denying injunction.

119 U. S. 327-334, 30 L. 408, McCREERY v. HASKELL.

Syl. 2 (XI, 227). Rights between settler and state.

Approved in Waldron v. United States, 143 Fed. 418, applying rule in determining rights of Indian allottee under 25 Stat. 892, c. 405, ceding Great Sioux reservation.

Syl. 4 (XI, 227). Land grants—Relation back to selection.

Approved in Nicholson v. Congdon, 95 Minn. 194, 103 N. W. 1036, subsequent payment of purchase price and issuance of patent perfects title as of date of application.

119 U. S. 335-338, 30 L. 406, POMACE HOLDER CO. v. FERGUSON.

Syl. 1 (XI, 227). Patents—Mechanical skill.

Approved in Kenney Mfg. Co. v. J. L. Mott Iron Wks., 137 Fed. 434, construing Kenney patent No. 566,770, for improvement in water-closets.

119 U. S. 343-347, 30 L. 420, COIT v. GOLD AMALGAMATING CO.

Syl. 3 (XI, 229). Corporations—Property for stock—Calls.

Cited in Easton Nat. Bank v. American Brick etc. Co., 69 N. J. Eq. 329, 60 Atl. 55, following rule; McBride v. Farrington, 131 Fed. 803, 804, where corporation's creditor rendered services without relying on fact that stock was fully paid, he could not enforce stockholder's liability on ground that stock subscription paid in property at excessive valuation; Speer v. Bordeleau, 20 Colo. App. 417, 79 Pac. 334, applying rule to mining corporation; Weed v. Gainesville R. R. Co., 119 Ga. 596, 46 S. E. 894, to point that embarrassed corporation may sell stock at less than par; Macbeth v. Banfield, 45 Or. 568, 106 Am. St. Rep. 670, 78 Pac. 698, applying principle where directors of corporation received property in exchange for stock.

119 U. S. 347-355, 30 L. 451, BUZARD v. HOUSTON.

Syl. 1 (XI, 230). Equity—Adequacy of law remedy.

Approved in United States v. Bitter Root Development Co., 200 U. S. 472, 50 L. 560, 26 Sup. Ct. 318, denying equity jurisdiction over bill for value of timber wrongfully cut and carried away from public domain; Ames Realty Co. v. Big Indian Min. Co., 146 Fed. 176, Mont. Code Civ., § 1891, providing that in actions relating to water rights, rights of all parties diverting water from same stream may be settled on their being made parties, is enforceable in federal court; General Elec. Co. v. Westinghouse Elec. & Mfg. Co., 144 Fed. 466, where

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contract to make and sell articles provided for penalty of fifty per cent of selling price to users in case of breach, injunction against violation of contract denied; American Lighting Co. v. Public Service Corp., 134 Fed. 131, one is not punishable for contempt for disregarding injunction in case where law remedy adequate and jurisdiction to issue injunction seasonably questioned and denied; United States v. Bitter Root Development Co., 133 Fed. 278, 66 C. C. A. 652, denying jurisdiction over bill by government against numerous defendants for joint trespass on public lands and unlawful cutting of timber and for accounting of profits; Racey v. Racey, 12 Okl. 653, 73 Pac. 306, refusing to set aside decree of divorce; Trimble v. Minnesota etc. Mfg. Co., 10 Okl. 581, 64 Pac. 9, applying rule in suit to cancel notes given for price of machinery sold for breach of warranty.

Syl. 2 (XI, 231). Equity—Fraud—Adequacy of law remedy.

Approved in Levi v. Mathews, 145 Fed. 154, in action at law for money due on contract, court has no jurisdiction over answer alleging fraud in procuring contract.

Distinguished in Southern Pac. R. Co. v. United States, 133 Fed. 657, 66 C. C. A. 581, upholding jurisdiction of suit by United States against railroad and others to determine rights in lands erroneously patented, confirm titles of bona fide purchasers, cancel patents to undisposed lands and for accounting from road for lands sold.

119 U. S. 355-357, 30 L. 439, KRAMER v. COHN.

Syl. 1 (XI, 232). Bankruptcy—Fraudulent conveyance.

Cited in Hatcher v. Hendrie etc. Supply Co., 133 Fed. 272, 68 C. C. A. 19, arguendo.

119 U. S. 361-373, 30 L. 455, WYLIE v. NORTHAMPTON BANK.

Syl. 2 (XI, 233). Banks—Stolen bonds—Want of care.

Approved in Morris v. Third Nat. Bank, 142 Fed. 31, 32, national bank which becomes owner of notes secured by mortgage may agree with other mortgagees to enforce security for all where it is for its own best interests.

119 U. S. 388-401, 30 L. 447, JOHNSON v. CHICAGO ETC. ELEVATOR CO.

Syl. 1 (XI, 234). Admiralty—Injury to warehouse.

Distinguished in United States v. Evans, 195 U. S. 364, 368, 49 L. 236, 238, 25 Sup. Ct. 46, upholding admiralty jurisdiction over libel in rem against vessel for negligent collision with beacon built on piles in water.

Syl. 4 (XI, 235). Admiralty—State maritime lien.

Approved in Delaney etc. Iron Co. v. The Winnebago, 142 Mich. 88, 105 N. W. 529, and The Winnebago, 141 Fed. 948, both upholding

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Michigan water craft act giving lien to persons furnishing labor and materials in construction of vessels.

119 U. S. 407-436, 30 L. 425, UNITED STATES v. RAUSCHER.

Syl. 1 (XI, 236). Extradition—Obligation to surrender.

See 112 Am. St. Rep. 107, note.

Syl. 2 (XI, 236). Extradition—State and foreign nation.

See 112 Am. St. Rep. 137, note.

Syl. 3 (XI, 236). Judicial notice—Treaties are contracts.

Approved in Ehrlich v. Weber, 114 Tenn. 723, 88 S. W. 191, determining right of native-born children of alien to inherit.

Syl. 4 (XI, 236). Extradition—Trial for other crime.

Approved in Ex parte Browne, 148 Fed. 69, 70, 71, one extradited from Canada under treaty of 1889 for trial on pending indictment cannot be seized by federal officers and imprisoned in execution of prior judgment on different charge.

Distinguished in United States v. Greene, 146 Fed. 768, 769, upholding sufficiency of indictment for conspiracy to defraud United States within British Extradition Treaty of 1890, art. 1, cls. 4, 10; Knox v. State, 164 Ind. 230, 108 Am. St. Rep. 291, 73 N. E. 257, fugitive extradited on charge for specific offense may be tried on different charge without opportunity to return to asylum state.

Syl. 5 (XI, 237). Extradition—Habeas corpus—Other crime.

Approved in Ex parte Collins, 149 Fed. 576, denying habeas corpus where petitioner extradited for perjury was again indicted for perjury committed on trial of first indictment.

119 U. S. 436-445, 30 L. 421, KER v. ILLINOIS.

Syl. 1 (XI, 238). Due process—Irregularity of arrest.

Approved in State v. Melvern, 32 Wash. 12, 72 Pac. 491, court has jurisdiction though no warrant of arrest issued where he was in custody and pleaded not guilty.

Syl. 2 (XI, 238). Time to question extradition.

See 98 Am. St. Rep. 687, note.

119 U. S. 464-468, 30 L. 436, BALTIMORE ETC. R. R. CO. v. BATES.

Syl. 1 (XI, 240). Removal—Repeal of Rev. St., § 639.

Approved in O'Conor v. Texas, 202 U. S. 507, 50 L. 1126, 26 Sup. Ct. 726, alien nonresident can no longer claim privilege of removal under Rev. St., § 639, subsec. 1; Cochran v. Montgomery Co., 199 U. S. 272, 50 L. 188, 26 Sup. Ct. 58, circuit court's jurisdiction depended entirely on diverse citizenship within circuit court of Appeals Act, § 6, where cause removed for local prejudice.

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Syl. 2 (XI, 240). Removal—Time to petition.

Approved in Kentucky v. Powers, 139 Fed. 485, upholding removal of criminal prosecution where defendant discriminated against in selection of jurors; Carpenter v. New York etc. R. R. Co., 184 Mass. 101, 68 N. E. 29, trial before auditor does not deprive plaintiff of right to nonsuit after hearing but before filing of auditor's report.

119 U. S. 469-472, 30 L. 435, PEPER v. FORDYCE.

Syl. 1 (XI, 240). Record must show federal jurisdiction.

Approved in Illinois etc. Ry. Co. v. Jones, 118 Ky. 165, 80 S. W. 486, reaffirming rule.

119 U. S. 485-491, 30 L. 474, WOLVERTON v. NICHOLS.

Syl. 1 (XI, 242). Mines—Agreement to lease—Local law.

Approved in Lily Min. Co. v. Kellogg, 27 Utah, 114, 115, 74 Pac. 519, following rule; Nome-Sinook Co. v. Simpson, 1 Alaska, 583, adverse suit by applicant for mining patent is maintainable in Alaska district court; Allen v. Myers, 1 Alaska, 119, action at law for recovery of possession when plaintiff out of possession or equity suit to quiet title when plaintiff in possession, is appropriate remedy to determine right of possession of mining claim as between claimants under Rev. St., § 2326; Hopkins v. Butte Copper Co., 29 Mont. 393, 74 Pac. 1082, failure of complaint to determine adverse claim to mining location to allege suit brought within time required by Rev. St., § 2326, can be raised only by demurrer; Deeney v. Mineral Creek Mill Co., 11 N. M. 287, 67 Pac. 724, declaration in ejectment is sufficient under Comp. Laws 1897, §§ 2290, 2291, to prevent all questions involved between applicant for mining patent and adverse claimant.

119 U. S. 491-494, 30 L. 476, GILBERT v. MOLINE PLOW CO.

Syl. 3 (XI, 243). Erroneous admission of immaterial evidence.

Approved in Security Trust Co. v. Robb, 142 Fed. 84, following rule.

119 U. S. 495-498, 30 L. 491, BIGNALL v. GOULD.

Syl. 1 (XI, 243). Liquidated damages—Indemnity bond.

Distinguished in Dieckerhoff v. United States, 136 Fed. 549, 69 C. C. A. 255, no recovery can be had without proof of actual damages for breach of bond given for return of unexamined imports, under Rev. St., § 2899.

119 U. S. 499-502, 30 L. 486, THACKRAH v. HAAS.

Syl. 1 (XI, 243). Cancellation—Conveyance when drunk.

Distinguished in McGinley v. Cleary, 2 Alaska, 276, refusing to set aside deed made by keeper of game in payment of gambling debt created while drunk.

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Syl. 2 (XI, 243). Conveyance while drunk—Repayment.

Approved in Price v. Connors, 146 Fed. 504, tender of consideration for release is condition precedent to suit for personal injuries where pleadings show jury may find damages in less than amount paid; Sharp v. Behr, 136 Fed. 805, where plaintiff conveyed land at actual cost of $3,500, on defendants' agreement to pay certain royalties if possession obtained by defendant and if not to recovery on payment of cost price, tender not necessary in advance of settlement of accounts where possession not acquired; Russell v. Russell, 129 Fed. 440, tender of payment made to widow by husband's executors is not condition precedent to suit to set aside antenuptial agreement where in any event she would be entitled to larger amount from estate. See 107 Am. St. Rep. 543, 544, note.

119 U. S. 502-513, 30 L. 482, BROOKS v. CLARK.

Syl. 3 (XI, 244). Removal of separable controversy.

Approved in Indian etc. Coal Co. v. Ashville etc. Coal Co., 135 Fed. 840, where action containing counterclaim tried in state court and judgment for plaintiff on main case affirmed but reversed as to counterclaim, it was not removable for retrial of counterclaim.

119 U. S. 522-525, 30 L. 500, WHITFORD v. CLARK COUNTY.

Syl. 1 (XI, 244). Deposition of witness not absent.

Approved in Lanza v. Le Grand Quarry Co., 124 Iowa, 662, 100 N. W. 489, shorthand report of testimony taken at former trial cannot be ready where witnesses are present when transcript offered.

Syl. 3 (XI, 245). Federal courts—Law governing evidence.

Approved in Smith v. Au Gres Twp., 150 Fed. 263, under Rev. St., § 858, witness could testify after bankrupt's death to admissions made by bankrupt concerning his estate while he was yet owner thereof; Swift v. Jones, 145 Fed. 492, circuit judge cannot order trial of action at law before special master authorized to hear and pass on issues of fact and report findings to court.

119 U. S. 526-530, 30 L. 469, ASHBY v. HALL.

Svl. 1 (XI, 245). Entry in trust—Right of way.

Approved in Conradt v. Miller, 2 Alaska, 436, abating nuisance consisting of wharf in front of plaintiff's property on bank of river which closes his free access; Heine v. Roth, 2 Alaska, 426, granting mandatory injunction to compel removal of buildings from land between high and low water marks; Martin v. Hoff, 7 Ariz. 253, 64 Pac. 448, mandamus does not lie to compel mayor as trustee to convey unoccupied lots in town entered under Comp Laws, c. 80, § 3, to one who had settled thereon for ten years; City of Guthrie v. Beamer, 3 Okl. 669, 41 Pac. 653, approval of townsite plat by Secretary of In-

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terior was dedication of lands designated on plats as streets and occupant was devested of interest.

Syl. 2 (XI, 245). Entry by town—Occupant's right of way.

Approved in Macintosh v. Nome, 1 Alaska, 494, 496, holding void resolution of town council of Nome to vacate public way dedicated by townsite settlers; City of Guthrie v. Beamer, 3 Okl. 674, 41 Pac. 654, approval of townsite plat by Secretary of Interior was dedication of lands designated on plats as streets and occupant was devested of interest.

119 U. S. 530-542, 30 L. 492, SUTTER v. ROBINSON.

Syl. 1 (XI, 245). Patents—Disclaimer.

Approved in Cimiotti Unhairing Co. v. American Fur. Refining Co., 198 U. S. 410, 49 L. 1105, 25 Sup. Ct. 697, Sutton patent No. 383,258, for fur-plucking machine, not infringed; Rembert etc. Compress Co. v. American Cotton Co., 129 Fed. 369, 64 C. C. A. 25, limiting Rembert patent No. 441,022, for method of baling cotton; Columbus Chain Co. v. Standard Chain Co., 148 Fed. 625, arguendo.

119 U. S. 543-550, 30 L. 487, HUSE v. GLOVER.

Syl. 3 (XI, 247). Commerce—Improvement of navigation by state.

Approved in Manigault v. Springs, 199 U. S. 478, 50 L. 278, 26 Sup. Ct. 127, upholding state act authorizing dam across navigable stream to drain lowlands; Kansas City etc. R. R. Co. v. Wiygul, 82 Miss. 231, 33 So. 967, 61 L. R. A. 578, upholding state authorization to build bridge over navigable interstate stream.

119 U. S. 551-561, 30 L. 515, GOETZ v. BANK OF KANSAS CITY.

Syl. 2 (XI, 247). Indorsement of bank.

Approved in Bank of Indian Territory v. First Nat. Bank, 109 Mo. App. 672, 83 S. W. 538, where drawee of draft pays it, he cannot avoid transaction by showing he was mistaken in supposing he had money in his hands to pay it. See 105 Am. St. Rep. 373, note.

Syl. 3 (XI, 248). Discounting drafts—Forgery of invoice.

Approved in Morrison v. Farmers' etc. Bank, 9 Okl. 700, 702, 60 Pac. 274, determining whether or not bank purchasing draft from drawer before maturity and giving him credit on deposit account for face of draft was purchaser for value. See 105 Am. St. Rep. 359, note.

Syl. 4 (XI, 248). Drafts—Bad faith of taker.

Approved in In re Troy & Cohoes Shirt Co., 136 Fed. 433, holding form of indorsements of notes payable to corporation and discounted by its treasurer not such as to charge bank with knowledge that they were accommodation notes.

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Syl. 6 (XI, 248). Declarations of agent—Passed transactions.

Approved in Walker Mfg. Co. v. Knox, 136 Fed. 343, 69 C. C. A. 160, in action for services in promoting contract for sale of materials, evidence of conversation between plaintiff and defendants vice-president as to value of services is inadmissible, where it occurred after latter left defendant's employ; Garske v. Ridgeville, 123 Wis. 508, 102 N. W. 24, in action against town for injuries due to defective highway, admissions of town chairman as to notice of inquiry are inadmissible when not res gestae.

119 U. S. 561-566, 30 L. 513, NORTHERN PAC. RY. v. PAINE.

Syl. 1 (XI, 248). Equitable defense at law—State law.

Approved in Anglo-American Land etc. Co. v. Lombard, 132 Fed. 731, 68 C. C. A. 89, in federal law action to enforce Kansas corporation stockholder's liability debt from corporation to stockholder cannot be offset.

Syl. 5 (XI, 249). Equitable claim to support law action.

Approved in Chapman v. Yellow Poplar Lumber Co., 143 Fed. 211, upholding supplemental bill to enforce compromise agreement made in equity suit.

Syl. 9 (XI, 249). License terminated by sale of land.

Approved in Price & B. Co. v. Madison, 17 S. D. 253, 95 N. W. 935, license to enter and cut timber is revoked by conveyance of fee.

119 U. S. 584-586, 30 L. 513, EX PARTE MIRZAN.

Syl. 2 (XI, 249). Habeas corpus by supreme court.

Approved in Re Lincoln, 202 U. S. 182, 50 L. 986, 26 Sup. Ct. 602, denying habeas corpus to one convicted in district court of bringing liquor into Indian country, where term of imprisonment has nearly expired; Riggins v. United States, 199 U. S. 550, 50 L. 304, 26 Sup. Ct. 147, sufficiency of indictment found in district court and removed to circuit court not testable in latter by habeas corpus where accused in custody under capias.

119 U. S. 586, 587, 30 L. 538, HANCOCK v. HOLBROOK.

Syl. 1 (XI, 249). Removal for local prejudice.

Distinguished in Boatmen's Bank v. Fritzlen, 135 Fed. 664, 68 C. C. A. 288, defendant who is citizen of state other than that in which suit is brought may remove for local prejudice though plaintiff and some of defendants are citizens of state where action brought.

(XI, 249.) Miscellaneous. Cited in Riverdale Cotton Mills v. Alabama etc. Mfg. Co., 198 U. S. 197, 49 L. 1016, 25 Sup. Ct. 629, decree of federal court whose jurisdiction invoked for diversity of citizenship which is admitted is not assailable in state court for lack of diversity.

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119 U. S. 587-603, 30 L. 532, BOREE v. CHAPMAN.

Syl. 4 (XI, 250). Estates of decedents—Nonresident creditor.

Approved in Bartleson v. Feidler, 149 Fed. 300, order of Alaska probate court distributing property to heirs of decedent is not conclusive adjudication that partnership did not exist between decedent and another to whom property belonged as against creditor of partner following property in hands of heirs.

Syl. 5 (XI, 250). Federal equity independent of states.

Approved in Schurmeier v. Connecticut etc. Ins. Co., 137 Fed. 47, 69 C. C. A. 22, determining jurisdiction over action on claim against estate of decedent; dissenting opinion in Moore v. Fidelity Trust Co., 138 Fed. 1009, majority denying federal jurisdiction over bill by distributee under will to compel accounting from surviving partner of decedent where probate pending in state court.

119 U. S. 608-613, 30 L. 504, IRON MT. ETC. RY. v. JOHNSON.

Syl. 1 (XI, 251). Forcible entry—Contractor forcibly dispossessed.

Approved in Oklahoma City v. Hill, 4 Okl. 532, 46 Pac. 572, where possessor is arrested for violation of liquor law and officers enter into possession and keep him therefrom, evidence of right to arrest and that defendant had deed to premises and plaintiff no right to possession is inadmissible in forcible entry.

119 U. S. 613-615, 30 L. 506, EX PARTE RALSTON.

(XI, 252.) Miscellaneous. Cited in Long v. Farmers State Bank, 147 Fed. 361, writs of error out of circuit court of appeals must issue in name of President, attested by chief justice and clerk of circuit court.

119 U. S. 615-624, 30 L. 519, CHICAGO ETC. RY. v. WIGGINS FERRY CO.

Syl. 2 (XI, 252). Judicial notice of foreign laws.

Approved in Leathe v. Thomas, 218 Ill. 253, 75 N. E. 812, setoff is defense to action on foreign judgment rendered in state where setoffs are not allowed in actions on judgments; Erwin v. Southern Ry., 71 S. C. 230, 50 S. E. 779, in order to make record of court of limited jurisdiction in garnishee proceedings in foreign state binding here, it must be shown that garnishee submitted to jurisdiction.

Syl. 3 (XI, 253). Supreme court—Judicial notice state laws.

See 113 Am. St. Rep. 873, note.

Syl. 4 (XI, 253). Supreme court—Federal question.

Approved in Allen v. Alleghany Co., 196 U. S. 463, 49 L. 555, 25 Sup. Ct. 311, whether or not contract entered into in contravention of statutes regulating foreign corporations was void and unenforceable in courts of another state, presents no federal question.

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119 U. S. 625-630, 30 L. 501, COPE v. VALLETTE DRYDOCK CO.

Syl. 1 (XI, 253). Salvage defined.

Approved in Fredericks v. James Rees & Sons Co., 135 Fed. 733, 68 C. C. A. 368, Pennsylvania Act 1858, giving lien for repairs or supplies to river vessels does not apply to dredge boat used only to support dredging apparatus.

119 U. S. 637-643, 30 L. 511, BARRELL v. TILTON.

Syl. 4 (XI, 254). Amendment of decree during term.

Approved in Sullivan v. Woods, 5 Ariz. 201, 50 Pac. 115, where district court on appeal rendered judgment for defendant and denied new trial, and plaintiff appealed, district court could, during term, vacate judgment.

119 U. S. 652-663, 30 L. 544, IVES v. SARGENT.

Syl. 1 (XI, 254). Patents—Delay in seeking reissue.

Approved in Milloy Elec. Co. v. Thompson etc. Elec. Co., 148 Fed. 846, holding void Van Depoele reissue No. 11,872, for traveling contact for electric railways; Tetrault v. Fournier, 187 Mass. 62, 72 N. E. 352, arguendo.

119 U. S. 664-679, 30 L. 539, HARTSHORN v. SAGINAW BARREL CO.

Syl. 2 (XI, 255). Patent reissue—Change in specifications.

Cited in Thomson-Houston Elec. Co. v. Black River Traction Co., 135 Fed. 765, 68 C. C. A. 461, arguendo.

119 U. S. 680-695, 30 L. 523, ENFIELD v. JORDAN.

Syl. 2 (XI, 255). Village and town distinguished.

Approved in Brown v. Grangeville, 8 Idaho, 785, 788, 71 Pac. 152, village organized under general laws is included in word "town" as used in Act of Feb. 2, 1899, § 1, relating to issuance of coupon bonds.

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120 U. S. 1-19, 30 L. 565, WILDENHEIS' CASE.

Syl. 1 (XI, 257). Local jurisdiction of high sea crimes.

Approved in Dallemagne v. Moisan, 197 U. S. 174, 49 L. 711, 25 Sup. Ct. 422, declaring arrest of state officer upon foreign consul's request of insubordinate seaman not invalid because of constitutional guarantee against deprivation of personal liberty without due process of law.

Syl. 2 (XI, 257). Federal restrictions on habeas corpus.

Approved in Ex parte Collins, 149 Fed. 575, refusing to try on habeas corpus pending appeal in state court the right of extradited prisoner to return to place of extradition before being tried for different offense; West Virginia v. Laing, 133 Fed. 891, 66 C. C. A. 617, releasing on habeas corpus members of posse comitatus charged with murder, where person killed was under federal indictment and resisted arrest; In re Dowd, 133 Fed. 752, denying habeas corpus where prisoner under sentence for contempt of Colorado supreme court and judgment thereof reviewable by writ of error; In re Ammon, 132 Fed. 714, refusing to release prisoner convicted under statute passed subsequent to commitment of offense.

120 U. S. 20-40, 30 L. 573, ALLEN v. ST. LOUIS BANK.

Syl. 1 (XI, 258). Sufficiency of facts—Exception unnecessary.

Approved in Webb v. National Bank of Republic, 146 Fed. 719, denying necessity of exception where facts found are insufficient to support judgment.

Syl. 2 (XI, 258). Custom unknown and unreasonable inadmissible.

Distinguished in Pennsylvania etc. R. R. Co. v. Naive, 112 Tenn. 257, 79 S. W. 128, 64 L. R. A. 443, holding carrier relieved from giving notice of arrival of goods on July 4th.

Syl. 3 (XI, 258). Pledged goods cannot be sold.

Approved in Thomas v. Provident etc. Co., 138 Fed. 369, holding power to sell in will does not include power to borrow money and secure same by mortgage.

120 U. S. 46-51, 30 L. 557, UNITED STATES v. SYMONDS.

Syl. 1 (XI, 259). Pay of naval officer performing shore duty.

Approved in United States v. Engard, 196 U. S. 515, 49 L. 576, 25 Sup. Ct. 322, presuming shore duty temporary and ancillary to sea duty, right to sea pay unaffected.

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Syl. 2 (XI, 259). Departmental rules have force of laws.

Approved in Parryman v. Cunningham, 16 Okl. 103, 82 Pac. 825, holding Land Department's findings of fact concerning title to public lands binding upon courts; Peters v. United States, 2 Okl. 122, 33 Pac. 1033, as to perjury committed before Land Department under rules requiring the testimony of all witnesses to contest reduced to writing.

120 U. S. 52-59, 30 L. 559, UNITED STATES v. PHILBRICK.

Syl. 3 (XI, 260). Contemporary executive statutory construction.

Approved in McMichael v. Murphy, 197 U. S. 313, 49 L. 770, 25 Sup. Ct. 460, following settled construction of Land Department and holding uncanceled homestead entry by disqualified person prevents initiation of homestead's rights of another; Avery v. Pima Co., 7 Ariz. 32, 60 Pac. 703, following construction of Department of Justice upon statute relative to care of United States criminals; Henry v. State, 87 Miss. 59, 39 So. 872, denying governor right to sue in name of state; Pitts v. Logan County, 3 Okl. 740, 41 Pac. 591, declaring void legislative act regulating fees of clerks of district courts; dissenting opinion in Bates etc. Co. v. Payne, 194 U. S. 111, 48 L. 896, 24 Sup. Ct. 595, majority refusing to review Postmaster General's discretion refusing to transmit periodical known as "Masters in Music" as second-class mail; dissenting opinion in Houghton v. Payne, 194 U. S. 103, 48 L. 892, 24 Sup. Ct. 590, majority holding contemporaneous construction an aid only when language of statute ambiguous; dissenting opinion in McDaid v. Territory, 1 Okl. 112, 30 Pac. 444, majority denying right of appeal from decision of townsite trustees, although allowed by secretary.

120 U. S. 64-68, 30 L. 563, TAMMANY WATER WORKS v. NEW ORLEANS WATER WORKS.

Syl. 1 (XI, 261). Exclusive franchise—Contract impairment.

Approved in Mercantile etc. Co. v. Columbus Water Works Co., 130 Fed. 184, restraining city from constructing competing water system; Columbia Ave. Sav. Fund etc. Co. v. Dawson, 130 Fed. 173, enjoining city from issuing bonds for construction of competing system of waterworks.

Distinguished in Water etc. Co. v. City of Hutchinson, 144 Fed. 264, denying second-class city's power to grant exclusive rights to use streets for supplying gas; Tillamook Water Co. v. Tillamook City, 139 Fed. 406, holding charter privileges not violated by construction of competing municipal water plant.

120 U. S. 68-72, 30 L. 578, HAYES v. MISSOURI.

Syl. 1 (XI, 262). Legislature may classify cities.

Approved in Field v. Barber Asphalt Paving Co., 194 U. S. 622, 48 L. 1153, 24 Sup. Ct. 284, sustaining statute although nonresident alone

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not given right to protest against public improvement; Globe Elevator Co. v. Andrew, 144 Fed. 879, holding statute providing for inspection and grading of grain at Superior only, not unconstitutional as denying equal protection of law; In re Finley, 1 Cal. App. 210, 81 Pac. 1046, sustaining act providing for death penalty in cases of assault with deadly weapons by life convicts; State v. Tower, 185 Mo. 95, 84 S. W. 13, 68 L. R. A. 402, sustaining act making emission of dense smoke in cities of more than one hundred thousand population a nuisance; State v. Preferred Tontine Mercantile Co., 184 Mo. 186, 82 S. W. 1081, sustaining act regulating businesses such as the Preferred Tontine Mercantile Company; People v. Reardon, 184 N. Y. 445, 112 Am. St. Rep. 636, 77 N. E. 974, denying act taxing transfers of stock in domestic and foreign corporation objectionable because one variety of property only taxed; State v. Fraternal Knights, 35 Wash. 345, 77 Pac. 503, holding act requiring only subsequently formed fraternal associations to adopt certain rates not unconstitutional; Foster v. Rowe, 128 Wis. 336, 107 N. W. 639, sustaining act providing for commissioners to equalize valuations between different municipalities in counties.

Distinguished in State v. Scampini, 77 Vt. 115, 59 Atl. 209, holding act permitting sales of cider and native wines by farmers and manufacturers only a denial of the equal protection of the law.

Syl. 2 (XI, 263). Peremptory challenge is to reject juror.

Approved in Howard v. Kentucky, 200 U. S. 173, 50 L. 425, 26 Sup. Ct. 189, holding accused not denied protection of fourteenth amendment—state court, by stipulation, examining juror without accused's presence and discharging him; Sawyer v. United States, 202 U. S. 158, 50 L. 976, 26 Sup. Ct. 575, holding federal government in North Carolina may conditionally challenge, although peremptory challenges unexhausted; State v. Jones, 32 Mont. 450, 80 Pac. 1098, holding no exception lies to court's ruling sustaining challenge for implied bias; Territory v. Padilla, 12 N. M. 7, 71 Pac. 1085, irregular order as to exercise of peremptory challenges harmless where defendant did not use all peremptories; Stevens v. Union R. R. Co., 26 R. I. 106, 58 Atl. 498, 66 L. R. A. 465, denying allowance of peremptory challenges in excess of statutory number ground for reversal where prejudice not shown.

120 U. S. 73-78, 30 L. 586, FORSYTH v. DOOLITTLE.

Syl. 3 (XI, 264). Value land foreclosed, evidencing attorney's fee.

Approved in Denison v. Shawmut Min. Co., 135 Fed. 865, holding jury may ignore testimony of experts; Andrews v. Frierson, 144 Ala. 477, 39 So. 514, holding register not bound by unimpeached expert testimony as to value of auctioneer's services; Pollard v. American etc. Mortgage Co., 139 Ala. 205, 35 So. 773, sustaining register's findings as to value of mortgagee's attorney services—one witness biased toward high estimate; the other considering services for which mort-

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gagor not liable; Parrish v. State, 139 Ala. 43, 36 So. 1021, approving instructions authorizing jury to disregard expert opinion not based on facts in evidence.

120 U. S. 78-82, 30 L. 580, HUNTINGTON v. SAUNDERS.

Syl. 1 (XI, 264). Bill demurrable, not seeking discovery.

Approved in McFarland v. State Sav. Bank, 132 Fed. 401, holding bill waiving answer under oath, defendant excused from answering interrogatories therein.

120 U. S. 89-97, 30 L. 601, UNITED STATES v. PARKER.

Syl. 1 (XI, 265). Dismissal showing settlement a bar.

Approved in Coram v. Ingersoll, 148 Fed. 173, holding judgment of dismissal entered upon sustaining statutory objection to admissibility of evidence res judicata.

Syl. 3 (XI, 265). Explaining nonsuit and retraxit.

Approved in Lindsay v. Allen, 112 Tenn. 650, 82 S. W. 173, holding voluntary dismissal on part of complainant not bar to future action.

120 U. S. 97-102, 30 L. 588, HUNTINGTON v. NORTHEN.

Syl. 3 (XI, 265). Statutes void in part.

Approved in Smith v. Peterson, 123 Iowa, 674, 99 N. W. 553, Code, § 1946, is void for omitting notice of proceedings to establish drains to land owners and makes void drainage scheme of §§ 1939-1951.

120 U. S. 105-109, 30 L. 590, GIBBS v. CRANDALL.

Syl. 1 (XI, 266). Causes removed, federal question involved.

Approved in Myrtle v. Nevada etc. Ry. Co., 137 Fed. 196, holding action to recover for personal injuries not removable, because of allegation that defendant engaged in interstate commerce.

120 U. S. 115-124, 30 L. 609, UNITED STATES v. OTIS.

Syl. 1 (XI, 266). Contracts relating to mail service.

Distinguished in Slavens v. United States, 196 U. S. 238, 49 L. 461, 25 Sup. Ct. 229, denying mail-carrying contractor extra compensation for services performed upon unauthorized demand of local postmaster.

120 U. S. 126-130, 30 L. 594, UNITED STATES v. SAUNDERS.

Syl. 1 (XI, 267). Clerk entitled to extra compensation.

Approved in State v. Grant, 12 Wyo. 11, 73 Pac. 473, holding Secretary of State entitled to the extra salary of governor while filling vacancy.

Distinguished in Bartlett v. United States, 197 U. S. 234, 49 L. 736, 25 Sup. Ct. 433, denying disbursing clerk of treasury department compensation for disbursing postoffice funds in district customs' collector supervises; Avery v. Pima Co., 7 Ariz. 34, 60 Pac. 704, denying sheriff

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extra compensation for care of United States prisoners; Finley v. Territory, 12 Okl. 644, 73 Pac. 280, holding probate judges not entitled to emoluments received while acting in townsite matters.

120 U. S. 130-140, 30 L. 569, KIRBY v. LAKE SHORE ETC. R. R.

Syl. 1 (XI, 267). Federal equity unlimited by states.

Approved in Stevens v. Grand Central Min. Co., 133 Fed. 32, 67 C. C. A. 284, allowing complainant relief regardless of state's statute of limitation; James v. Gray, 131 Fed. 408. 65 C. C. A. 385, allowing wife to prove debt against bankrupt's estate regardless of its enforceability under state law.

Syl. 2 (XI, 267). Discovery of fraud starts statute.

Approved in Mullen v. Walton, 142 Ala. 173, 39 So. 99, allowing complainant to file bill for settlement of trust created more than twenty years prior to filing of bill and when complainant but eleven years of age.

Syl. 3 (XI, 268). Equity jurisdiction over complicated accounts.

Approved in Fidelity etc. Co. v. Fidelity Trust Co., 143 Fed. 159, allowing bill where transactions between parties complicated and intricate; McMullen Lum. Co. v. Strother, 136 Fed. 303, 69 C. C. A. 433, entertaining jurisdiction although accounts not mutual; Fechteler v. Palm Bros., 133 Fed. 465, 66 C. C. A. 336, allowing bill where statement of account by a master more complete and adequate.

Syl. 5 (XI, 268). Laches bars extension of limitations.

Approved in dissenting opinion in Cook v. Ceas, 147 Cal. 623, 82 Pac. 374, majority holding plaintiff not guilty of laches in absence of hardship, by mere lapse of time less than statutory time.

(XI, 268.) Miscellaneous. Cited in Fountain v. Lewiston Nat. Bank, 11 Idaho, 465, 83 Pac. 508, refusing to disturb trial court's finding against trust where transaction appears upon face equitable.

120 U. S. 141-160, 30 L. 614, CRESCENT LIVE STOCK CO. v. BUTCHERS' UNION ETC. CO.

Syl. 4 (XI, 269). Reversed judgment evidences probable cause.

Approved in Burt v. Smith, 181 N. Y. 6, 73 N. E. 496, holding order granting injunction pendente lite although subsequently reversed and complaint dismissed prima facie evidence of probable cause in action for malicious prosecution; King v. Estabrooks, 77 Vt. 374, 60 Atl. 85, holding judgment sufficiently impeached by allegation of bad faith to destroy its effect as probable cause.

120 U. S. 169-183, 30 L. 627, UNITED STATES v. HILL.

Syl. 1 (XI, 271). Federal clerks must account for fees.

Approved in Pitts v. Logan County, 3 Okl. 737, 738, 739, 740, 41 Pac. 590, 591, holding clerks of district courts must account for all fees, both territorial and United States, to Secretary of Treasury.

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Syl. 2 (XI, 271). Clerk entitled to extra compensation.

Distinguished in Finley v. Territory, 12 Okl. 640, 73 Pac. 279, denying probate judges extra compensation while acting in townsite matters.

Syl. 3 (XI, 271). Executive construction of statutes weighty.

Approved in United States v. Swift, 139 Fed. 230, following principal case and allowing expenditures incurred by marshal for extra bailiffs; dissenting opinion in Bates etc. Co. v. Payne, 194 U. S. 111, 48 L. 896, 24 Sup. Ct. 595, majority refusing to interfere with postmaster general's refusal to admit monthly musical publication as second-class mail.

Distinguished in Avery v. Pima Co., 7 Ariz. 32, 60 Pac. 703, denying sheriff extra compensation for care of United States prisoners.

120 U. S. 183-197, 30 L. 644, PHOENIX LIFE INS. CO. v. RADDEN.

Syl. 1 (XI, 272). Application answers construed as warranties.

Approved in Aetna Life Ins. Co. v. Rehlaender, 68 Neb. 292, 94 N. W. 132, holding representation as to health on application to revive policy must be proven false before recovery defeated; Guthrie Nat. Bank v. Fidelity etc. Co., 14 Okl. 641, 79 Pac. 103, refusing to construe statements to indemnity company to execute bond for employee as warranties unless different construction impossible; Logan v. Assurance Society, 57 W. Va. 389, 50 S. E. 531, holding application made part of policy, applicant's answers to questions therein representations.

Distinguished in Supreme Conclave v. Wood, 120 Ga. 336, 47 S. E. 941, holding any material variation in statements covenanted to be true, wherein risk changed, avoids the policy.

Syl. 2 (XI, 272). Misrepresentations avoid policy.

Approved in Atlas Reduction Co. v. New Zealand Ins. Co., 138 Fed. 499, holding policy terminated by executing chattel mortgage without insurer's consent; Hanrahan v. Metropolitan Life Ins. Co., 72 N. J. L. 508, 63 Atl. 282, holding policy avoided where answer, though incomplete, false; Deming Inv. Co. v. Shawnee Ins. Co., 16 Okl. 17, 83 Pac. 923, holding application made part of insurance contract, statements therein are warranties, and breach thereof avoids policy.

Distinguished in Rupert v. Supreme Court U. O. F., 94 Minn. 295, 102 N. W. 716, holding answers not shown to be affirmatively false will not prevent recovery on policy.

Syl. 4 (XI, 273.) Exceptions embodying entire charge condemned.

Approved in Newport etc. Ry. etc. Co. v. Yount, 136 Fed. 590, 69 C. C. A. 363, refusing to review instructions where exceptions fail to contain evidence pertinent to issue, although evidence elsewhere in record.

Syl. 5 (XI, 273). Accepting premium waives broken conditions.

Approved in German-American Ins. Co. v. Yeagley, 163 Ind. 656, 71 N. E. 899, holding provision, policy void if property encumbered and

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waiver thereof not indorsed on policy, waived by issuing policy and retaining premium; Gish v. Insurance Co. of North America, 16 Okl. 72, 87 Pac. 873, holding question of waiver one of fact for jury.

120 U. S. 198-206, 30 L. 649, BOFFINGER v. TURGIS.

Syl. 1 (XI, 274). Surety discharged by abandonment of appeal.

See notes in 100 Am. St. Rep. 418, 447.

120 U. S. 206-214, 30 L. 642, MEYERS v. BLOCK.

(XI, 274.) Miscellaneous. Cited in Swift v. Jones, 135 Fed. 439, holding guarantor discharged where employer failed to obtain bond for employee as provided for in contract guaranteed.

120 U. S. 223, 224, 30 L. 623, EVERHART v. HUNTSVILLE COLLEGE.

Syl. 1 (XI, 275). Averring residence, not averring citizenship.

Approved in Board of Trustees of Mohican Tp. v. Johnson, 133 Fed. 524, 66 C. C. A. 592, dismissing petition alleging that plaintiff "is a nonresident of Ohio, being a resident of Illinois."

Distinguished in Steigleder v. McQuesten, 198 U. S. 143, 49 L. 988, 25 Sup. Ct. 616, examining, on appeal, evidence bearing on citizenship, although motion to dismiss merely averred parties residents of same state.

120 U. S. 225-227, 30 L. 623, KING BRIDGE CO. v. OTOE CO.

Syl. 1 (XI, 275). Circuit court's lack of jurisdiction presumed.

Approved in Thomas v. Board of Trustees, 195 U. S. 211, 49 L. 164, 25 Sup. Ct. 24, denying allegation, board of trustees a citizen of, domiciled in, and created under designated laws of Ohio, sufficient to impute to member thereof citizenship of creating state; Minnesota v. Northern Securities Co., 194 U. S. 63, 48 L. 877, 24 Sup. Ct. 598, examining record and declaring circuit court without jurisdiction, although both sides treated case as removal; Utah-Nevada Co. v. De Lamar, 133 Fed. 117, 66 C. C. A. 179, denying jurisdiction of suit by assignee unless record affirmatively shows suit maintainable by assignor.

Syl. 3 (XI, 276). Assignee sues where assignor could.

Approved in Gorman Wright Co. v. Wright, 134 Fed. 365, 67 C. C. A. 346, dismissing bill, holder of assignee filing bill, citizen of same state as assignor.

120 U. S. 241-249, 30 L. 624, QUINCY v. STEEL.

Syl. 1 (XI, 277). Nonresident stockholder's bill denied.

Approved in Doctor v. Harrington, 196 U. S. 588, 49 L. 610, 25 Sup. Ct. 355, entertaining bill alleging corporation under control antagonistic and detrimental to complaining stockholders; Kemmerer v. Haggerty, 189 Fed. 696, dismissing bill brought by nonresident stockholders after

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formal refusal of corporation to bring suit in federal court; Groel v. United Elec. Co., 132 Fed. 259, 261, 262, remanding, corporation under control of antagonistic officers aligned with defendants for purpose of determining citizenship.

120 U. S. 256-260, 30 L. 639, INDIANAPOLIS ROLLING MILL v. ST. LOUIS ETC. R. R.

Syl. 2 (XI, 277). Ratification by failing to repudiate.

Distinguished in Lister etc. Works v. Selby, 68 N. J. Eq. 274, 59 Atl. 249, denying president's act accepting new lease and releasing option on old, binding in absence of notice to directors.

120 U. S. 274-287, 30 L. 658, IN RE SNOW.

Syl. 5 (XI, 279). Continuous offense not twice punishable.

Approved in Wilson v. Commonwealth, 119 Ky. 775, 82 S. W. 429, holding person practicing dentistry without license subject to one conviction for entire period preceding institution of prosecution.

Distinguished in United States v. Bradford, 148 Fed. 418, holding prosecution for conspiracy not barred as to any overt act committed within statutory period, although barred as to acts commencing conspiracy.

120 U. S. 287-303, 30 L. 595, MEMPHIS ETC. R. R. v. DOW.

Syl. 1 (XI, 280). Subrogation an equitable doctrine.

Approved in The Livingstone, 130 Fed. 749, 65 C. C. A. 610, holding insurer under valued policy entitled to recover from insured recovering from responsible vessel, only amount paid with interest. See 99 Am. St. Rep. 478, note.

Syl. 2 (XI, 280). Reorganization bonds valid under constitution.

Approved in Weed v. Gainesville R. R. Co., 119 Ga. 596, 46 S. E. 894, denying defense of usury as against bona fide purchaser of corporate bonds without notice. See 111 Am. St. Rep. 327, note.

Syl. 3 (XI, 281). Paying mortgage subrogated to prior lien.

See 99 Am. St. Rep. 512, note.

120 U. S. 303-318, 30 L. 684, FARLEY v. KITTSON.

Syl. 1 (XI, 281). Equity plea should disclose bar.

Approved in Thresher v. General Elec. Co., 143 Fed. 340, striking out, in suit for infringement, plea setting up defense of prior invention; Mutual Life Ins. Co. v. Blair, 130 Fed. 973, denying, in action to cancel policy, plea setting up insured's death subsequent to commencement thereof, and the pendency of action upon policy; Barber v. National Carbon Co., 129 Fed. 377, 64 C. C. A. 40, holding plea, in action for infringement, construed as plea for license only, sufficient.

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Syl. 2 (XI, 281). Effect of replication upon plea.

Approved in Ocala etc. Works v. Lester, 49 Fla. 369, 38 So. 62, throwing, where replication filed, burden of proof upon defendant to prove matters contained in plea.

Syl. 3 (XI, 282). Bill dismissed, facts pleaded true.

Distinguished in Schnauffer v. Aste, 148 Fed. 867, overruling plea not fully meeting all the equities of the bill; Glucose etc. Co. v. Douglass & Co., 145 Fed. 951, striking out plea setting up a single defense of non-infringement.

Syl. 4 (XI, 282). Facts admitted by arguing plea.

Approved in Raphael v. Trask, 194 U. S. 276, 48 L. 978, 24 Sup. Ct. 647, holding allegations in plea admitted case brought on for consideration on complaint and plea; Siegman v. Electric Veh. Co., 140 Fed. 121, holding in absence of replication all facts well pleaded taken for true; General Electric Co. v. Bullock El. Mfg. Co., 138 Fed. 414, holding complainant setting cause admits the facts, but not the conclusions pleaded.

120 U. S. 318, 319, 30 L. 663, PENSACOLA ICE CO. v. PERRY.

Syl. 1 (XI, 283). Verdict must conform to statute.

Approved in Hoover v. King, 43 Or. 285, 99 Am. St. Rep., 72 Pac. 882, 65 L. R. A. 790, denying action to recover possession of property barred by former action, no showing therein made, title tried and determined.

120 U. S. 327-336, 30 L. 664, UNITED STATES v. NORTHWAY.

Syl. 3 (XI, 283). Alleging misapplication of funds, sufficient.

Approved in Lear v. United States, 147 Fed. 357, holding willful misapplication made out, if officer has such "control, direction and power of management as to direct application"; United States v. Martindale, 146 Fed. 286, holding merely drawing draft on deposit in another bank on entering credits to depositor on books does not constitute willful misapplication; United States v. Eastman, 132 Fed. 553, possession of funds sufficiently alleged by averment that he was president, had access to bank's funds and performed duties in their control, management.

Syl. 5 (XI, 284). Indictment charging misapplication of funds.

Approved in United States v. Martindale, 146 Fed. 292, holding indictment must show how misapplication was made and that it was unlawful; United States v. Green, 136 Fed. 643, holding indictment for bribery, alleging the tendering of certain "obligation for payment of money" insufficient where contents of check not set forth; United States v. Eastman, 132 Fed. 552, sustaining indictment charging defendant with willfully, unlawfully, fraudulently and without bank's consent converted funds to own use and to use of others than bank; United

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States v. Howard, 132 Fed. 355, holding indictment for subornation of perjury must contain word "willful" or its equivalent.

120 U. S. 354-363, 30 L. 653, MERWETHER v. MUHLENBURG CO. COURT.

Syl. 2 (XI, 285). Justices of peace levying taxes.

Approved in Guthrie v. Sparks, 131 Fed. 446, 450, 65 C. C. A. 427, holding duty of levying taxes to pay principal and interest of railway bonds, being ministerial, rested upon county judge.

120 U. S. 377-390, 30 L. 718, SPIEDEL v. HENRICI.

Syl. 1 (XI, 286). Trust not barred by lapse of time.

Approved in Sternfels v. Watson, 139 Fed. 509, holding co-owners not barred from instituting proceeding against adverse claimants through unauthorized conveyances by co-owner.

Syl. 2 (XI, 286). Express trust repudiated, limitations run.

Approved in Patterson v. Hewitt, 195 U. S. 321, 49 L. 219, 25 Sup. Ct. 35, holding trustee's refusal to execute deed in compliance with agreement known to complainants, opens door to defense of laches; Thorne v. Foley, 137 Mich. 651, 100 N. W. 905, holding delay of forty-five years barred complainants from recovering against trustee continuously disavowing trust; Patterson v. Hewitt, 11 N. M. 23, 42, 66 Pac. 558, 564, 55 L. R. A. 658, refusing after period of eight years to enforce nonresident's claim for valuable ores discovered and mined after claimant had left state; Felkner v. Dooly, 28 Utah, 239, 78 Pac. 366, holding beneficiary barred four years after receiving notice that trustee claimed ownership of trust funds.

Syl. 4 (XI, 287). Equity aids the vigilant.

Approved in Socrates Quicksilver Mines v. Carr Real. Co., 130 Fed. 294, 64 C. C. A. 539, holding bill seeking relief against fraud filed thirty years after beginning, and twenty-four years after consummation of fraud, demurrable on grounds of laches; Sawyer v. Cook, 188 Mass. 168, 74 N. E. 357, denying relief as against persons, holding legal title, demand for accounting under agreement delayed for twenty-nine years; McAden v. Palmer, 140 N. C. 261, 52 S. E. 1034, holding defendant under earlier entry, registered twelve years after grant registered by plaintiff, barred from having plaintiff declared trustee; Holsberry v. Harris, 56 W. Va. 332, 49 S. E. 409, denying relief, where son, placed in possession by father, made improvements upon father's alleged promise to make him owner, delayed for twenty years to enforce rights.

120 U. S. 390-412, 30 L. 721, ROLSTON v. MISSOURI FUND COMMRS.

Syl. 2 (XI, 289). Suit against officer not against state.

Approved in Graham v. Folsom, 200 U. S. 255, 50 L. 469, 26 Sup. Ct. 245, holding mandamus to compel county auditors and treasurers to pay judgment on township bonds not suit against state.

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Distinguished in Saunders v. Saxton, 182 N. Y. 481, 482, 108 Am. St. Rep. 826, 75 N. E. 530, holding state necessary party to action by land owner against land commissioner and state controller to have tax deeds declared void.

120 U. S. 412-430, 30 L. 712, GRIER v. WILT.

Syl. 1 (XI, 289). Prior patents showing state of art.

Approved in Brookfield v. Elmer Glass Works, 144 Fed. 419, holding evidence of number of patent antedating patent in suit, admissible to show state of act and to construe claims of patent in suit.

120 U. S. 430-442, 30 L. 708, HOPT v. UTAH.

Syl. 7 (XI, 290). Evidence wrongfully admitted cured by withdrawal.

Approved in Krause v. United States, 147 Fed. 452, prosecuting attorney's misconduct securing admission of incompetent evidence cured by court's instruction to disregard; Johnson v. People, 33 Colo. 241, 80 Pac. 138, holding possible error in admission of evidence subsequently shown to be hearsay cured by instructions to disregard.

(XI, 291.) Miscellaneous. Cited in dissenting opinion in Kepner v. United States, 195 U. S. 135, 49 L. 126, 24 Sup. Ct. 797, majority discharging prisoner where judgment of acquittal for embezzlement reversed by Philippine supreme court, and accused found guilty.

120 U. S. 450-464, 30 L. 743, ROSENBAUM v. BAUER.

Syl. 2 (XI, 291). Federal mandamus aids existing jurisdiction.

Approved in Large v. Consolidated Nat. Bank, 137 Fed. 168, denying mandamus to compel national banking association to allow stockholder to inspect list of stockholders; Mystic Milling Co. v. Chicago etc. Ry. Co., 132 Fed. 292, denying jurisdiction, although Iowa statute permits recovery of damages in action of mandamus; Wiemer v. Louisville Water Co., 130 Fed. 250, 256, sustaining court's equitable power to restrain water company from refusing to supply water to all upon same terms, where refusal clearly an unlawful discrimination; Western Union Tel. Co. v. State, 165 Ind. 496, 76 N. E. 102, denying court erred refusing to remove application for mandamus to compel telegraph company to sell and deliver to relators continuous market quotations.

120 U. S. 464-479, 30 L. 748, HERRON v. DATER.

Syl. 4 (XI, 292). Recitals in prior land patents.

Approved in Davis v. Moyles, 76 Vt. 33, 35, 56 Atl. 176, 177, recitals in petition to legislature for grant of lands that land confiscated from petitioner's father, and private act granting lands and containing same recital, not evidence of confiscation in trespass.

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120 U. S. 489-502, 30 L. 694, ROBBINS v. SHELBY CO. TAXING DIST.

Syl. 2 (XI, 295). Congress silent commerce unrestricted.

Approved in People v. Reardon, 184 N. Y. 452, 112 Am. St. Rep. 641, 77 N. E. 977, sustaining act imposing tax on transfers of stock in domestic and foreign corporations, not a regulation of commerce; Greek-American Sponge Co. v. Richardson etc. Co., 124 Wis. 475, 102 N. W. 890, allowing foreign corporation to recover against domestic corporation without complying with statutory provisions; dissenting opinion in Northern Securities Co. v. United States, 193 U. S. 371, 48 L. 714, 24 Sup. Ct. 436, majority holding combination to acquire controlling interest in competing interstate railway companies violates anti-trust act of 1890.

Distinguished in People v. Chicago etc. Ry. Co., 223 Ill. 594, 79 N. E. 148, upholding state statute requiring all railroads operated within state to report to state railroad commission.

Syl. 3 (XI, 295). State laws affecting commerce.

Approved in Metropolitan Life Ins. Co. v. Board of Assessors, 115 La. 706, 39 So. 849, holding act announcing state's policy regarding taxation of notes and credits as applicable to foreign corporations, a legitmate exercise of legislative power; Commonwealth v. Strauss, 191 Mass. 554, 78 N. E. 139, sustaining act prohibiting the sale of goods on condition purchaser shall not patronize any other firm.

Syl. 4 (XI, 296). State cannot tax interstate commerce.

Distinguished in American Steel etc. Co. v. Speed, 110 Tenn. 546, 100 Am. St. Rep. 814, 75 S. W. 1042, sustaining tax, goods shipped into state in large quantities and held there awaiting sales within state.

Syl. 5 (XI, 297). Interstate commerce includes sales negotiation.

Approved in Kirven v. Virginia etc. Co., 145 Fed. 293, holding foreign corporation shipping goods in state on order secured by local agent not barred from recovering therefor by noncompliance with state statute; Globe Elevator Co. v. Andrew, 144 Fed. 882, declaring state statute providing for inspection, grading and weighing of grain as applicable to interstate shipments unconstitutional.

Syl. 6 (XI, 298). State cannot tax nonresident drummers.

Approved in Myers v. United States, 140 Fed. 651, Canadian license fee for cutting wood manufactured into pulp in effect an imposition of an export duty on pulp wood exported to United States; Ex parte Deeds, 75 Ark. 545, 87 S. W. 1031, declaring act making it a misdemeanor for any person except resident merchants to peddle without a license, unconstitutional, on grounds of discrimination; In re Kinyon, 9 Idaho, 646, 75 Pac. 269, declaring act imposing tax on solicitors unconstitutional so far as affecting authorized solicitors of nonresident merchants. People v. Reardon, 184 N. Y. 456, 112 Am. St. Rep. 645, 77 N. E. 978, sustaining act imposing tax on transfers of stock in domestic and foreign corpora-

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tions; Wrought Iron Range Co. v. Campen, 135 N. C. 512, 519, 526, 47 S. E. 660, 663, 665, declaring act imposing license on every person peddling stoves void as to sales by sample, goods shipped into state and delivered in original packages; Baxter v. Thomas, 4 Okl. 610, 612, 46 Pac. 481, declaring city ordinance imposing occupation tax upon all persons selling or offering for sale goods unconstitutional as to solicitor of nonresident firm; Bacon v. Locke, 42 Wash. 217, 83 Pac. 722, declaring act unconstitutional providing that every person who, after shipment to state, sells by sample certain articles shall pay license fee. See 112 Am. St. Rep. 650, note.

Distinguished in Hart v. State, 87 Miss. 179, 39 So. 525, sustaining conviction, under prohibition act of Louisiana, liquor merchant taking orders in Mississippi, collecting purchase price and subsequently delivering goods by express; Oilure Mfg. Co. v. Pidduck-Ross Co., 38 Wash. 142, 143, 80 Pac. 277, 278, sustaining act requiring every person selling goods by trading stamps to pay license fee.

Syl. 7 (XI, 300). Interstate commerce—Mingling goods.

Approved in Wrought Iron Range Co. v. Campen, 135 N. C. 527, 531, 47 S. E. 665, 667, holding goods brought into state and incorporated with general property thereof fit subject of state taxation.

(XI, 301.) Miscellaneous. Cited in Central R. R. Co. v. Elizabeth, 70 N. J. L. 581, 57 Atl. 406, on question of prosecutor's right to litigate the validity of an ordinance.

120 U. S. 506-510, 30 L. 707, SCHULER v. ISRAEL.

Syl. 2 (XI, 301). Garnishee's defenses same as against debtor.

Approved in Field v. Sammis, 12 N. M. 47, 73 Pac. 620, following rule; Frees v. Shields Const. Co., 145 Fed. 1020, staying federal court proceedings to offset deposit against note until receiver's action on note in state court is settled; Harrison v. Remington Paper Co., 140 Fed. 394, holding in action upon stockholders' statutory liability corporation's notes, though merged in judgment, still competent evidence of debt represented; Stern etc. Co. v. Wing, 135 Mich. 332, 97 N. W. 792, declaring order granting claimant leave to intervene immaterial where garnishee defendant pleaded same defense urged by claimint, and cause determined upon undisputed facts; Frank v. Mercantile Nat. Bank, 182 N. Y. 268, 108 Am. St. Rep. 805, 74 N. E. 842, holding debtor may set off claims acquired after bankrupt's insolvency, but before assumption of liability upon which sued. See 111 Am. St. Rep. 422, note.

120 U. S. 511-517, 30 L. 704, LACLEDE BANK v. SCHULER.

Syl. 2 (XI, 302). Assignment, notice of, gives priority.

Approved in Johnston v. Huff, 133 Fed. 706, 66 C. C. A. 534, secret assignment not presented till one day before bankruptcy is preference.

Distinguished in Third Nat. Bank v. Atlantic City, 130 Fed. 753, 65 C. C. A. 177, holding public contractor's warrant accepted by comptroller and

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delivered to bank for advancements operated as transfer of legal title without further notice.

120 U. S. 517-526, 30 L. 701, CARTER CO. v. SINTON.

Syl. 1 (XI, 303). Subject of act in title.

Approved in Blair v. Chicago, 201 U. S. 452, 50 L. 823, 26 Sup. Ct. 427, holding Illinois requirement satisfied if incongruous legislation excluded, and matters included by fair intendment have proper or necessary connection with title.

Syl. 3 (XI, 303). New counties paying debts of old.

Approved in Desha Co. v. Chicot Co., 73 Ark. 395, 396, 84 S. W. 628, 629, sustaining act apportioning indebtedness between old county and part detached and authorizing collection of just proportion of expenses compromising claim.

120 U. S. 527-534, 30 L. 740, ACCIDENT INS. CO. v. CRANDAL.

Syl. 1 (XI, 303). Defendant introducing evidence waives error.

Approved in United States etc. Co. v. Board of Commrs., 145 Fed. 150, holding demurrer to plaintiff's case waived by subsequent introduction of evidence to merits; Burton v. United States, 142 Fed. 60, holding right to insist that verdict should rest solely upon prosecution's evidence waived by production of evidence; Carle v. Oklahoma Woolen Mills, 16 Okl. 522, 86 Pac. 68, holding party proceeding with cause waives exception to court's ruling.

Syl. 2 (XI, 304). Self-destruction excludes suicide while insane.

Approved in Jarnagin v. Travelers' Pro. Assn., 132 Fed. 895, 66 C. C. A. 622, 68 L. R. A. 499, holding death while in custody, through negligence of officers, within policy exceptions, of death by "intentional injuries inflicted by another."

Distinguished in Whitfield v. Aetna Life Ins. Co., 144 Fed. 359, permitting insurer to limit policy to one-tenth its value in case of death by suicide.

120 U. S. 534-555, 30 L. 759, FLETCHER v. FULLER.

Syl. 1 (XI, 305). Grant presumed from possession and use.

Approved in Penny v. Central Coal & Coke Co., 138 Fed. 772, presuming in absence of deed from thirty years' uninterrupted possession of land that entry was under purchase.

Syl. 2 (XI, 306). Payment of taxes evidences ownership.

Approved in McCaughn v. Young, 85 Miss. 293, 37 So. 842, holding person under deed, paying taxes and using lands to same extent as other lands owned by him, cutting timber therefrom and recording mortgages thereon, possessed same adversely.

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120 U. S. 556-569, 30 L. 754, PEOPLE'S SAVINGS BANK v. BATES.

Syl. 2 (XI, 307). Chattel mortgage proof against general creditor.

Approved in Chandler v. Colcord, 1 Okl. 276, 32 Pac. 335, holding that creditor must obtain judgment and levy valid execution before attacking chattel mortgage of debtor; dissenting opinion in Blackman v. Baxter, 125 Iowa, 130, 100 N. W. 79, 70 L. R. A. 250, majority holding an administrator may claim unrecorded chattel mortgage of decedent void as against existing creditors.

Syl. 4 (XI, 307). Pre-existing debt poor mortgage consideration.

Approved in Dugan v. Beckett, 129 Fed. 58, 63 C. C. A. 498, holding mortgage authorizing mortgagor to remain in possession and providing for an accounting each day to mortgagee not fraudulent on face; Board of Trustees v. Fry, 192 Mo. 563, 91 S. W. 475, denying purchaser of deed of trust, executed after erroneous decree denying foreclosure, to secure existing debt, protection against mortgage upon reversal of decree; Empire State etc. Co. v. Trustees of W. F. Fisher & Co., 67 N. J. Eq. 605, 60 Atl. 941, declaring mortgage to secure antecedent debt not given for value within bankruptcy act or state corporation act.

Distinguished in In re Marin etc. Co., 144 Fed. 651, denying under New York decisions, mortgage covering after-acquired property valid as to houseboat built chiefly with labor and materials furnished after mortgage given.

Syl. 5 (XI, 307). Bill and notes before maturity negotiable.

Approved in Herrick v. Edwards, 106 Mo. App. 637, 81 S. W. 467, holding negotiability of note destroyed by memorandum upon back, "Note not transferable or to be used as collateral without written consent of principal and indorsers."

120 U. S. 569-575, 30 L. 732, CHICAGO ETC. R. R. v. GUFFEY.

Syl. 2 (XI, 308). Taxation exemption must be clear.

Approved in Lake Drummond Canal Co. v. Commonwealth, 103 Va. 345, 49 S. E. 508, holding foreclosure sale of corporate property and francise did not pass to purchaser corporation's immunity from taxation.

120 U. S. 575-586, 30 L. 789, SCHLEY v. PULLMAN CAR CO.

Syl. 1 (XI, 309). Husband joining in wife's deed.

See notes, 97 Am. St. Rep. 585, 586, 587.

Syl. 2 (XI, 309). "Personally came and known," implies acquaintance.

Approved in Garton v. Hudson-Kimberly Pub. Co., 8 Okl. 638, 58 Pac. 948, omission of "their" in acknowledgment provision, "and each for themselves acknowledge execution thereof to be —— free and voluntary act," does not render acknowledgment void. See 108 Am. St. Rep. 570, note.

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120 U. S. 586-595, 30 L. 734, GILMER v. STONE.

Syl. 1 (XI, 309). Extrinsic evidence to explain ambiguities.

Approved in Cook v. Universalist Gen. Convention, 138 Mich. 160, 101 N. W. 218, admitting evidence where bequest to "Universalist Japan Mission Fund" to show testatrix a Universalist in faith; Darnell v. Lafferty, 113 Mo. App. 303, 88 S. W. 791, admitting parol evidence to show what heifers and cows were referred to by statement "ten head of cows and heifers."

120 U. S. 600-605, 30 L. 798, EAST ST. LOUIS v. AMY.

Syl. 1 (XI, 310). Illinois permits municipal bond taxation.

Approved in People v. Peoria etc. Ry. Co., 216 Ill. 227, 74 N. E. 736, holding school directors' duty when bonds issued and indebtedness incurred to provide annual tax to pay interest and principal; Pettibone v. West Chic. Park Commrs., 215 Ill. 317, 324, 326, 74 N. E. 392, 394, holding constitutional provision self-executing act not repugnant because amount raised thereby insufficient to pay interest and principal of bonds; Evans v. McFarland, 186 Mo. 727, 85 S. W. 880, holding indebtedness voted, constitutional provision providing for tax to pay same, self-enforcing.

Syl. 2 (XI, 310). Mandamus compelling city to levy tax.

Approved in McKie v. Rose, 140 Fed. 148, denying wrongful expenditure of proceeds of bond sale to pay judgment a defense to petition for mandamus to compel tax levy to pay judgment.

Syl. 3 (XI, 310). Mandamus compelling single tax levy.

Approved in State v. Walker, 193 Mo. 712, 92 S. W. 74, awarding mandamus to compel school board to execute refunding bonds to liquidate former bonds, where no tax provided for their liquidation.

120 U. S. 605-630, 30 L. 801, GONZALES v. ROSS.

Syl. 2 (XI, 311). Regularity of official's acts presumed.

Approved in Griffin v. American Gold Min. Co., 136 Fed. 73, 68 C. C. A. 637, presuming in support of levy that marshal performed the proper acts in levying attachment.

Syl. 3 (XI, 311). Mexican laws relating to public grants.

Approved in Surghenor v. Ranger, 133 Fed. 461, holding final purchaser having grant surveyed and possession issue to him by commissioner took both legal and equitable title.

(XI, 311.) Miscellaneous. Cited in Barnes v. Newton, 5 Okl. 448, 49 Pac. 1077, holding favorable decision of Land Department not entitling one out of possession to maintain injunction suit to recover possession of land.

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120 U. S. 630-648, 30 L. 810, DUSHANE v. BENEDICT.

Syl. 3 (XI, 311). Sale for particular purpose—Warranty.

Approved in Bunch v. Weil, 72 Ark. 347, 80 S. W. 583, 65 L. R. A. 80, reaffirming rule; Davis etc. Co. v. Mallory, 137 Fed. 335, 69 L. R. A. 973, 69 C. C. A. 662, denying implied warranty from contract to supply described and definite article, although vendor knew article purchased for particular purpose; Ketchum v. Stetson etc. Mill Co., 33 Wash. 97, 73 Pac. 1128, holding purchaser inspecting logs before running through mill cannot recover damages to mill on account of iron imbedded in logs.

Syl. 7 (XI, 312). Purchaser may set off warranty claim.

Approved in Anglo-American etc. Co. v. Lombard, 132 Fed. 732, 68 C. C. A. 89, denying stockholder's right in federal court to offset indebtedness from corporation to him in action to enforce statutory liability.

(XI, 312.) Miscellaneous. Cited in Kimber v. Young, 137 Fed. 747, 70 C. C. A. 178, holding cause of action for breach of warranty may be joined with that for deceit growing out of same transaction.

120 U. S. 649-678, 30 L. 830, PORTER v. PITTSBURG ETC. STEEL CO.

Syl. 3 (XI, 313). Majority owner not dominating directors.

Approved in Virginia etc. Co. v. Fisher, 104 Va. 132, 51 S. E. 202, holding stockholder must demand directors to institute proceedings unless refusal to do so reasonably certain.

120 U. S. 678-707, 30 L. 766, BALDWIN v. FRANKS.

Syl. 1 (XI, 314). Separable constitutional parts of statute upheld.

Approved in United States v. Ju Toy, 198 U. S. 263, 49 L. 1044, 25 Sup. Ct. 644, holding exception of a class constitutionally exempt cannot be read into general words of act to save what remains; Brooks v. Southern Pac. Co., 148 Fed. 993, 995, declaring federal employer's liability act void, act applicable to all commerce and not confined to that subject to federal control; United States v. Scott, 148 Fed. 435, 436, declaring statute making it a criminal offense for interstate carriers to discriminate against employees joining labor unions void if statute unlimited; Cella Com. Co. v. Bohlinger, 147 Fed. 423, holding act permitting service upon state auditor void, being applicable to foreign corporations doing business without state; In re The Copper King, 143 Fed. 650, refusing to limit California Insolvency Act making costs incurred in attachment proceedings a preferred claim to cases in which taxable costs provable under bankruptcy act.

(XI, 315.) Miscellaneous. Cited in Smiley v. Kansas, 196 U. S. 455, 49 L. 550, 25 Sup. Ct. 289, holding federal supreme court pre-

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